

No. 12068

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United States  
Court of Appeals  
for the Ninth Circuit

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FRANK M. SIEGMUND,

Appellant,

vs.

GENERAL COMMODITIES CORPORATION,  
LIMITED, WM. H. HEEN, ERNEST K. KAI  
and THELMA M. AKANA,

Appellees.

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Transcript of Record

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Appeal from the United States District Court  
for the District of Arizona

FILED  
NOV 28 1948

PAUL P. O'BRIEN,  
CLERK



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for the Ninth Circuit

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# INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Affidavit of W. T. Davis in Support of Motion to Quash Return of Service and to Dismiss Action .....	18
Affidavit of Frank M. Siegmund in Support of Memorandum in Opposition of Motion to Dismiss and Quash Service .....	20
Affidavit of Marvin Heaney, filed May 6, 1948..	60
Affidavit of Homer Stevenson, filed May 6, 1948	61
Amended Motion of W. T. Davis, Wm. H. Heen, Ernest K. Kai and Thelma M. Akana, to Quash Service of Summons and Dismiss Action .....	56
Amended Motion of General Commodities Corporation, Ltd., to Quash Return of Service of Summons and Dismiss Action .....	58
Appeal:	
Certificate of Clerk to Transcript of Record on	79
Designation of Record on (DC).....	72
Designation of Additional Record on (DC)...	75
Notice of .....	69
Orders Extending Time to File Record and Docket .....	70, 78
Statement of Points on (DC).....	71
Statement of Points on (USCA).....	110
Stipulation, Motion and Order for Extension of Time to File Record on Appeal and Docket .....	69

	PAGE
Bond on Appeal (See Clerk's Certificate).....	79
Certificate of Clerk to Transcript of Record on Appeal .....	79
Certificate of Judge under the Act of August 24, 1937 .....	65
Complaint .....	2
Depositions (portions designated):	
William H. Heen .....	25
Glenn C. Taylor .....	29
William Thomas Davis .....	36
Designation of Record on Appeal (DC).....	72
Designation of Additional Record on Appeal (DC) .....	75
Letter of Attorney General to Clerk, dated June 14, 1948 .....	66
Letter of Clerk to Attorney General, dated May 18, 1948 .....	64
Minute Entries:	
Mar. 22, 1948—Allowing Complaint be amend- ed by interlineation and ordering Motions to Quash Return of Summons and to Dismiss Action submitted .....	23
April 30, 1948—Order Granting Leave to File Amended Motions to Quash Return of Sum- mons and to Dismiss Action.....	55
Motion of W. T. Davis, Wm. H. Heen, Ernest K. Kai and Thelma M. Akana, to Quash Service of Summons and Dismiss Action, Amended..	56

Motion of General Commodities Corp., Ltd., to Quash Return of Service of Summons and Dismiss Action, Amended .....	58
Names and Addresses of Attorneys.....	1
Notice of Appeal .....	69
Orders Extending Time to File Record and Docket Appeal .....	70, 78
Order of Dismissal, dated July 3, 1948.....	68
Statement of Points to be Relied on by Ap- pellant on Appeal (DC).....	71
Statement of Points to be Relied on by Ap- pellant on Appeal (USCA).....	110
Stipulation, Motion and Order for Extension of Time to File Record on Appeal and Docket Appeal .....	69
Summons with Marshal's Return of Service....	17
Transcript of Testimony:	
Witnesses for Defendants:	
Siegmund, Frank M.	
—cross .....	81
—redirect .....	89
Witness for Plaintiff:	
Caswell, David H.	
—direct .....	106
—cross .....	108





ATTORNEYS OF RECORD

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Phoenix, Arizona,  
Attorneys for Appellant.

RAWLINS, DAVIS, CRISTY & KLEINMAN,  
733 Security Building,  
Phoenix, Arizona,  
Attorneys or Appellees. [1\*]

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\* Page numbering appearing at foot of page of original  
certified Transcript of Record.

In the District Court of the United States  
for the District of Arizona

Civil No. 1142-Phx.

FRANK M. SIEGMUND,

Plaintiff,

vs.

GENERAL COMMODITIES CORPORATION,  
LIMITED, an Hawaiian corporation, W. T.  
DAVIS, also known as W. THOMAS DAVIS,  
THE BLACK CORPORATION, THE  
WHITE CORPORATION, WM. H. HEEN,  
ERNEST K. KAI, and THELMA M. AKANA,  
Defendants.

### COMPLAINT

Comes now the Plaintiff and for his First Cause  
of Action against the Defendants alleges as follows:

#### I.

That Plaintiff, Frank Siegmund, is a resident of  
Maricopa County, Arizona, and a citizen of the  
State of Arizona, that the Defendant General Com-  
modities Corporation, Limited, is a corporation  
duly organized and existing under and by virtue of  
the Laws of the Territory of Hawaii and is a citi-  
zen of said Territory; that said corporation has  
been continuously and now is doing a substantial  
portion of its business in the State of Arizona; that  
Plaintiff is credibly informed and believes and,  
therefore, alleges upon such information and belief  
that the Defendant W. T. Davis, also known as W.

Thomas Davis, is a resident and a citizen of the State of California and that the said Defendant W. T. Davis, also known as W. Thomas Davis, is not a resident nor a citizen of the State of Arizona; that Plaintiff is credibly informed and believes and, therefore, alleges upon such information and belief that the Defendants The Black Corporation and The White Corporation are non-resident and foreign corporations [4] and that said corporations are not organized under and by virtue of the Laws of Arizona nor do they maintain a regular place of business within the State of Arizona; that the true names of the Defendants sued herein as The Black Corporation and The White Corporation are to Plaintiff unknown and Plaintiff prays to be allowed to substitute their true names if the same should become known. The Plaintiff further alleges that the matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars.

## II.

That on or about the 28th day of August, 1947, Plaintiff entered into a Contract in writing with the Defendant, General Commodities Corporation, Limited, which said Contract is in words and figures as follows:

### “AGREEMENT”

“This Agreement entered into this 28th day of August, 1947, between General Commodities Corporation, Ltd., a Hawaiian Corporation, by Mr. W. Thomas Davis, its Vice President and Executive

Director, their assignees, and specifically including a subsidiary Guamanian Corporation to be organized and controlled by the aforementioned General Commodities Corporation, Ltd., to be referred to in this agreement as parties of the first part, and Frank M. Siegmund of Phoenix, Arizona, an individual referred to in this agreement as party of the second part.

“It is understood and agreed that the parties of the first part are now engaged in and attempting to purchase and/or arrange for the purchase of certain items and/or commodities generally construed to be War Surplus from the Republic of China and its agencies for the purpose of resale and/or to negotiate the purchase of War Surplus items and/or commodities for a third party whomever it may be.

“It is understood and agreed that the parties of the first part desire to and do hereby employ the party of the second part as their exclusive sales representative in the United States of America for any and all the aforementioned *itmes* and/or commodities purchased or for which they, or their authorized representatives have arranged or negotiated the purchase of by a third party from the Republic of China or any of its agencies.

“It is further understood and agreed that the party of the second part shall assemble a competent sales organization under his supervision in order to aggressively offer for sale all items and/or commodities for which the parties of the first part have purchased and/or negotiated the purchase of from the Republic of China.



“It is further understood and agreed that the parties of the first part shall keep the party of the second part [5] fully informed as to what items and/or commodities they have acquired for resale, together with complete description and selling price and/or actual cost of items and/or commodities; and party of the second part agrees to abide by the terms and conditions of sale as instructed by party of the first part.

“It is further understood and agreed that parties of the first part shall pay to the party of the second part within ten days after receipt of payment from purchaser of any and all items and/or commodities acquired from or for which the party of the first part or their authorized agents have negotiated the purchase of by a third party from the Republic of China or its agencies, the sum of twenty percent of the net profits of each individual sale or transaction as a selling commission.

“It is further understood and agreed that the term ‘net profits’ shall be construed to mean such profit as may remain in each individual sale after deduction by parties of the first part of necessary travelling and/or miscellaneous expenses used to acquire the items and/or commodities sold and/or for which the parties of the first part or their authorized agents have negotiated the sale of to a third party, and such deductions shall not include any salaries and/or other fixed overhead charges by the parties of the first part.

“It is further understood and agreed that the aforementioned twenty percent (20%) shall be considered as payment in full for services rendered to

parties of the first part by party of the second part in selling and/or disposing of any and all merchandise acquired by and/or negotiated for by parties of the first part or their authorized agents.

“It is further understood and agreed that if the parties of the first part, their assignees or authorized agents deem it advisable to organize a new corporation with offices and headquarters on Guam, Marianas Islands, for reasons best known to them for the purpose of purchasing and/or negotiating the purchase of by their authorized agents for a third party of War Surplus Materials from the Republic of China or its agencies, that this agreement shall become part of and incorporated in the by-laws of this new subsidiary corporation.

“It is understood and agreed that this agreement shall remain in full, force and effect for a period of one year from date first mentioned above and is automatically extended beyond that period unless terminated and cancelled by written notice sent by registered mail thirty days prior to date of cancellation, by either party of this agreement.

“In Witness Whereof, the parties hereto have executed this agreement the day and year first mentioned above.

“GENERAL COMMODITIES  
CORPORATION, LTD.

By /s/ W. T. DAVIS,

Its Vice President

/s/ FRANK M. SIEGMUND,

An Individual

Witness: B. H. Holmes (Signed)”

### III.

That the said Contract hereinabove referred to was executed by Defendant General Commodities Corporation, Limited, by and through the Defendant W. T. Davis, also known as W. Thomas Davis. [6] its Vice President and Executive Director; that at the time of the execution of said Contract the said W. T. Davis, also known as W. Thomas Davis, was the duly appointed and acting Vice President and Executive Director of the Defendant General Commodities Corporation, Limited, and duly authorized to enter into said Contract for and on behalf of said Defendant General Commodities Corporation, Limited.

### IV.

That pursuant to said Contract hereinabove referred to, Plaintiff in good faith entered into the performance of his obligations under said Contract and has since that date fully performed all of his obligations under said contract by him to be performed and has assembled a competent sales organization under his supervision and has aggressively offered for sale all items and/or commodities for which the Defendants and each of them have purchased and/or negotiated the purchase from the Republic of China; that Plaintiff pursuant to and in reliance upon said Contract has secured numerous purchasers for the commodities referred to in said Contract and negotiated for the sale of said commodities and that as a result of said negotiations by and efforts of the Plaintiff, large quantities of said commodities have been and are being

purchased from the Defendant General Commodities Corporation, Limited, and pay for the same has been made or has been arranged for to the satisfaction of said Defendant General Commodities Corporation, Limited, and that such payment is duly secured; that as the result of the efforts of Plaintiff, *numeous* prospective purchasers have been interested in the purchase of the commodities referred to in said contract and Plaintiff alleges that contracts for the sale of such commodities by Defendant General Commodities Corporation, Limited, to such *prosepective* purchasers are being negotiated and will be negotiated in the future as a result of the efforts [7] of Plaintiff; that as the result of the efforts of Plaintiff, Defendant General Commodities Corporation, Limited, has received substantial net profits from the sale of said commodities and that more than ten (10) days has elapsed since the receipt by said Defendant General Commodities Corporation, Limited, of such substantial net profits;

#### V.

That despite the Agreements and Covenants of Defendant General Commodities Corporation, Limited contained in said Contract, said Defendant General Commodities Corporation, Limited, has failed and refused upon demand by Plaintiff to disclose to Plaintiff the amounts received from said sales and the net profits derived from said sales and has failed and refused upon demand by Plaintiff to account to Plaintiff for such receipts and net profits and has failed and refused upon demand



by Plaintiff to pay to Plaintiff all or any portion of the commissions based on net profits received as set forth in said Contract to be paid to Plaintiff; that said demands by Plaintiff were made more than ten (10) days subsequent to the receipt of payments from purchasers by Defendant General Commodities Corporation, Limited;

VI.

That Defendant General Commodities Corporation, Limited, by its duly authorized officers has informed Plaintiff that it will continue to refuse to carry out the terms of said Contract; that Plaintiff is credibly informed and believes and, therefore, alleges upon such information and belief that twenty percent of the net profits to Defendants General Commodities Corporation, Limited, The Black Corporation and The White Corporation will be the sum of Two Million Dollars or in excess thereof. That by reason of the refusal of said Defendants to comply with their obligations under said contract, Plaintiff is damaged in [8] the amount of Two Million Dollars.

VII.

That Plaintiff has no knowledge whether the Defendant General Commodities Corporation, Limited, has organized any new subsidiary corporations in accordance with the terms of the written contract as aforesaid; that the names, The Black Corporation and The White Corporation hereinbefore referred to are designations for such new corporations or substitute corporations if the same have in fact been organized.

## VIII.

That full and complete records of said sales as aforesaid and the amounts paid by the Purchasers to said Defendant General Commodities Corporation, Limited, and to Defendants The Black Corporation and The White Corporation, and the net profits received therefrom are in the custody and control of said Defendants General Commodities Corporation, Limited, The Black Corporation, and The White Corporation; That Plaintiff does not have said records or copies thereof from which the amounts of his commissions, calculated as provided in said contract, could be determined.

## IX.

That Plaintiff is credibly informed and believes and, therefore, alleges upon such information and belief that the monies and the net profits heretofore received and to be received by Defendants General Commodities Corporation, Limited, The Black Corporation, and The White Corporation constitute the principal assets of said corporations and that said monies and net profits so received and to be received are being dissipated or will be dissipated by said Defendants General Commodities Corporation, Limited, The Black Corporation, and The White Corporation unless a Receiver is appointed by this Court to take charge of said monies and net profits of said Defendants and to preserve the [9] same pending Judgment herein; that Plaintiff is credibly informed and believes that substantial sums of money, letters of credit, and substantial portions of the net profit of Defendants General Commodities

Corporation, Limited, The Black Corporation and The White Corporation, are within the jurisdiction of this Court and are on deposit and held by the Valley National Bank at Phoenix, Arizona, and that unless a Receiver is appointed by this Court to take charge of and preserve said assets now within the jurisdiction of this Court, the same will be removed by the Defendants General Commodities Corporation, Limited, The Black Corporation, and The White Corporation from the jurisdiction of this Court.

Wherefore, Plaintiff prays Judgment against the Defendants and each of them that an account be taken of all the dealings and transactions in respect to said Contract in this First Cause of Action set forth and of the monies and net profits received by the Defendants General Commodities Corporation, Limited, The Black Corporation, and The White Corporation, and that the rights and duties of the Plaintiff and the said Defendants General Commodities Corporation, Limited, The Black Corporation, and The White Corporation in respect to said Written Contract in this First Cause of Action set forth, be Adjudged, Declared, and Determined by the Court; that a Receiver be immediately appointed by this Honorable Court to take charge of all monies, letters of credit, and net profits of the General Commodities Corporation, Limited, The Black Corporation, and The White Corporation, together with all books, accounts, and documents of every kind and description connected with said business, that the said Receiver take possession of

said monies, letters of credit and net profits of the said Defendants General Commodities Corporation, Limited, The Black Corporation, and The White Corporation, subject to the direction of this Court [10] and that he hold all said proceeds subject to the future Orders of this Court; that Plaintiff have Judgment for the specific performance of the Contract above set forth in Paragraph II; that Plaintiff have damages against the Defendants and each of them in the amount of Two Millior Dollars; that Plaintiff have his costs herein incurred; and for such other and further relief as to the Court may seem just and proper.

JAMES L. DeSOUZA and  
JOHN F. SULLIVAN,

By JAMES L. DeSOUZA,  
Attorneys for Plaintiff.

## SECOND CAUSE OF ACTION

Comes now the Plaintiff and for his Second Cause of Action against the Defendants alleges as follows:

### I.

Plaintiff re-pleads all of the allegations contained in Paragraph I of his First Cause of Action to which reference is hereby made and the same are hereby incorporated and referred to in this Cause of Action and made a part hereof as though the same were again fully set forth.



II.

That the Defendants Wm. H. Heen, Ernest K. Kai, and Thelma M. Akana, are residents of the Territory of Hawaii and citizens of Hawaii and that said Defendants are not residents of the State of Arizona nor citizens of the State of Arizona.

III.

Plaintiff re-pleads all of the allegations contained in Paragraphs II, III, IV, V, VI and IX of his First Cause of Action to which reference is hereby made and the same are hereby incorporated and referred to in this Cause of Action and made a part [11] hereof as though the same were again fully set forth.

IV.

That Plaintiff is credibly informed and believes and, therefore alleges upon such information and belief that the Defendant General Commodities Corporation, Limited, is a corporation formed by the Defendants W. T. Davis, also known as W. Thomas Davis, Wm. H. Heen, Ernest K. Kai, and Thelma M. Akana, for the express purpose of entering into and carrying out the transactions referred to in the Contract hereinabove set forth and that upon the completion of said transactions, said Corporation will be dissolved and will divest itself of all of its assets and that such dissolution will occur prior to Judgment in this Action; that Plaintiff is credibly informed further and believes and, therefore, alleges upon such information and belief that the Defendant General Commodities Corporation,

Limited, has distributed substantial portions of its net profits including all of its net profits on several of the transactions referred to in the Contract hereinabove set forth to the Defendants W. T. Davis, also known as W. Thomas Davis, Wm. H. Heen, Ernest K. Kai, and Thelma M. Akana, and that the future distribution of all of its net profits will be made to the Defendants W. T. Davis, also known as W. Thomas Davis, Wm. H. Heen, Ernest K. Kai, and Thelma M. Akana; that Plaintiff is further credibly informed and believes and, therefore, alleges upon such information and belief that said distribution of net profits by Defendant General Commodities Corporation, Limited, in this Paragraph above set forth, made heretofore and to be *make* in the future, are for the express purpose of defrauding the Plaintiff and preventing the Plaintiff from recovering from said General Commodities Corporation, Limited, the payments provided in said contract to be paid to Plaintiff and circumventing the rights of Plaintiff under said Contract. [12]

## V.

That Plaintiff is credibly informed and believes and, therefore, alleges upon such information and belief that the Defendants General Commodities Corporation, Limited, W. T. Davis, also known as W. Thomas Davis, Wm. H. Heen, Ernest K. Kai, and Thelma M. Akana have engaged in and are engaging in a conspiracy to defraud the Plaintiff or his rights and the payment due him under and

by virtue of the contract hereinabove set forth by causing the net profits of said General Commodities Corporation, Limited, to be distributed to Defendants W. T. Davis, also known as W. Thomas Davis, Wm. H. Heen, Ernest K. Kai, and Thelma M. Akana, and that pursuant to said conspiracy the Defendant General Commodities Corporation Limited, W. T. Davis, also known as W. Thomas Davis, Wm. H. Heen, Ernest K. Kai, and Thelma M. Akana, have caused substantial portions of the net profits of said General Commodities Corporation, Limited, including all of the net profits of said corporation from several of the transactions referred to in said Contract hereinabove set forth to be distributed to the Defendants W. T. Davis, also known as W. Thomas Davis, Wm. H. Heen, Ernest K. Kai, and Thelma M. Akana.

VI.

That the Officers of the Defendant General Commodities Corporation, Limited, are Wm. H. Heen, President, W. Thomas Davis, Executive Vice President, Ernest K. Kai, Treasurer, and Thelma M. Akana, Secretary.

That by reason of the distribution of the net profits and by reason of the conspiracy and unlawful acts of the Defendants aforesaid, the Plaintiff has been damaged in the sum of Two Million Dollars;

Wherefore, Plaintiff prays Judgment against the Defendants, General Commodities Corporation, Limited, W. T. Davis, also known as W. Thomas Davis, Ernest K. Kai, Wm. H. Heen, and Thelma

M. Akana, and each of them for Two Million Dollars damages, costs of suit herein incurred, and for such other and further relief as to the Court may seem just and proper.

JAMES L. DeSOUZA and  
JOHN F. SULLIVAN,

By JAMES L. DeSOUZA,  
Attorneys for Plaintiff.

State of Arizona,  
County of Maricopa—ss.

Frank M. Siegmund, being first duly sworn upon oath, deposes and says:

That he is Plaintiff named in the above and foregoing Complaint; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated on information and belief and as to those matters he believes it to be true.

FRANK M. SIEGMUND.

Subscribed and sworn to before me this 17th day of February, 1948.

JAMES L. DeSOUZA,  
Notary Public.

My Commission expires May 11, 1949.

[Endorsed]: Filed Feb. 17, 1948.

[14]



District Court of the United States for the District  
of Arizona, Phoenix Division

Civil Action File No. 1142-Phx.

[Title of Cause.]

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon James L. DeSouza and John F. Sullivan, plaintiff's attorneys, whose address is 508 Luhrs Tower, Phoenix, Arizona, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

(Seal) WM. H. LOVELESS,  
Clerk of Court.

By GERTRUDE I. BITTING,  
Deputy Clerk.

Date Feb. 17, 1948. [15]

(Returns of Service of Writ attached.) [16]

[Endorsed]: Filed Mar. 1, 1948.

## RETURN OF SERVICE OF WRIT

I hereby certify and return, that on the 17th day of February 1948, I received the within summons and on the 17th day of February 1948 I served same on the therein named Thelma M. Akana both as an individual and as Secretary of the General Commodities Corporation at the Phoenix, City Airport, Phoenix, Arizona at 6:45 p.m. Wm. H. Heen at room 704 Westward Ho Hotel, Phoenix, Arizona at 7:15 p.m. W. T. Davis both as an individual and as Vice President of the General Commodities Corporation, at 726 Encanto Drive SE, Phoenix, Arizona at 8:00 p.m.

All services made by showing each of them the original and by handing to and leaving with each of them a copy thereof together with a copy of complaint attached.

Marshal's Fees: Travel, \$.98; Service, \$12.00.  
Total \$12.98.

B. J. McKINNEY,  
U. S. Marshal.

By TED O. MULLEN,  
Deputy U. S. Marshal.

## RETURN ON SERVICE OF WRIT

Civil No. 1142 Phoenix

United States of America,  
District of Arizona—ss.

I hereby certify and return that I served the annexed Summons on the therein-named Ernest K.

Kai by handing to and leaving a true and correct copy thereof to which was attached copy of complaint, with Ernest K. Kai in front of No. 726 Encanto Drive, S.E., at the same time showing him the original summons at 5:45 p.m. personally at Phoenix in said District on the 18th day of February, 1948.

B. J. McKINNEY,  
U. S. Marshal.

By FRANKLIN S. WILLETS,  
Deputy.

RETURN ON SERVICE OF WRIT

Civil No. 1142 Phoenix

United States of America,  
District of Arizona—ss.

I hereby certify and return that I served the annexed Summons on the therein-named Wm. H. Heen by showing him the original and at the same time by handing to and leaving a true and correct copy thereof with copy of complaint attached with him in Atty. Rawlins' office, Security Building, at 5:25 p.m. personally at Phoenix in said District on the 20th day of February, 1948.

Service, \$2.00; Travel, \$.06.

B. J. McKINNEY,  
U. S. Marshal.

By M. CASSIE BAKER,  
Deputy.

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION TO  
QUASH RETURN OF SERVICE AND TO  
DISMISS ACTION

State of Arizona,  
County of Maricopa—ss.

W. T. Davis, being first duly sworn on oath, deposes and says:

That he is one of the defendants in the above entitled action and is also an officer of General Commodities Corporation, Limited, defendant therein, and makes this affidavit for and on behalf of all of the defendants served in said action; that the defendant, General Commodities Corporation, Limited, is a corporation organized under the laws of the Territory of Hawaii; that said corporation has not qualified to do business in the State of Arizona, and has not appointed or authorized any officer or agent to accept service on its behalf of any process whatsoever in the State of Arizona; said corporation has not at any time carried on business in the State of Arizona, and said corporation is not now carrying on business in the State of Arizona; that said corporation has not at any time maintained a business office or business agency in the State of Arizona, and does not now maintain a business office or business agency in said state; that the contract sued on in plaintiff's complaint in the above entitled action was entered into outside of the State of Arizona; that this defendant,

W. T. Davis, and the [17] defendants, William H. Heen, Ernest K. Kai and Thelma M. Akana, are all non-residents of the State of Arizona; that the subject matter of said action, if any, arose outside of the State of Arizona;

The foregoing affidavit is made in support of the motions of said defendants to quash return of service of summons and dismiss said action.

W. T. DAVIS.

Subscribed and sworn to before me this 6th day of March, 1948.

(Seal)

ARTHUR M. DAVIS,  
Notary Public.

My Commission expires 2/26/51.

#### EXHIBIT A

[Endorsed]: Motion of W. T. Davis, Wm. H. Heen, Ernest K. Kai and Thelma M. Akana, to quash return of service of summons and dismiss action, memorandum in support of motion, affidavit in support of motion to quash return of service and to dismiss action, and notice of hearing motion filed, March 8, 1948. [18]



[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MEMORAN-  
DUM IN OPPOSITION OF DEFENDANTS'  
MOTION TO DISMISS AND QUASH  
SERVICE

State of Arizona,  
County of Maricopa—ss.

Frank M. Siegmund, being first duly sworn, upon oath deposes and says:

That he is the Plaintiff in the above entitled Action; that since the execution of the contract referred to in the Complaint in this Action, he has been the exclusive sales representative in the United States of America of the Defendant General Commodities Corporation, Limited, and has negotiated numerous sales transactions and solicited numerous customers for the merchandise of said corporation and has at all times maintained the national sales headquarters of said corporation at Phoenix, Arizona, and carried on said negotiations and solicitations for the most part at Phoenix, Arizona; that the major business of said corporation as to sales has been carried on in the United States of America and through affiant's sales headquarters at Phoenix, Arizona; that numerous transactions for the sale of said corporation's merchandise, all in very large quantities and at very large total prices and comprising a substantial portion and, affiant is credibly informed and believes, the major portion of the sales of said Corporation have been [19] negotiated at Phoenix, Arizona, by affiant

and by Defendant W. T. Davis as an officer of said corporation, and that numerous large customers and purchasers of said corporation's merchandise have been requested to come and did come to Phoenix, Arizona, for the negotiation of said transactions, including among others Bert Kaplan, Jack Purdy, Admiralty Trading Company, and affiant is credibly informed and believes also including the purchasing representatives of the Indonesian Government, and negotiators for the purchase of goods by the Bethlehem Steel Corporation, which said transaction affiant truly believes represents a sales price of Thirty-seven Million Dollars and that said transactions were negotiated at Phoenix, Arizona; that Defendant W. T. Davis at all times since the formation of said corporation was its Vice President and executive director and held the Power of Attorney of said corporation which affiant believes to be a General Power of Attorney, with the exception of a period of from five days to one week, and that said W. T. Davis is the person principally interested in said corporation, and who had authority to negotiate transactions on behalf of said corporation and that said W. T. Davis made his headquarters within the United States of America at Phoenix, Arizona, and performed a substantial portion of the negotiations on behalf of said corporation at Phoenix, Arizona; that several letters of credit in payment of very large sales prices by customers of said corporation were placed with the Valley National Bank at Phoenix, Arizona, and that affiant is credibly informed and believes that Phoenix, Arizona, is and

has been for some time, the principal place of payment to said corporation by its customers; that a substantial portion of the financing required by said corporation in the consummation of its transactions was made at Phoenix, Arizona, by and through the Valley National Bank, and that negotiations for such financing were carried on at Phoenix, Arizona; that Plaintiff is credibly informed and [20] believes that, as shown by the Deposition of Wm. H. Heen filed herein, the Honolulu headquarters of said corporation consists of only one room in an office building across the hall from the offices of Heen and Kai, Attorneys for said corporation, and affiant is credibly informed and believes that none of the sales of said corporation nor any substantial portion of its business were transacted at Honolulu, Hawaii.

FRANK M. SIEGMUND.

Subscribed and sworn to before me this 13th day of March, 1948.

JAMES L. DeSOUZA,  
Notary Public.

My Commission expires May 11, 1949.

Received copy hereof this 15th day of March, 1948.

RAWLINS, DAVIS,  
CHRISTY & KLEINMAN,  
By GEO. H. RAWLINS/VH,  
Attorneys for Defendants, General Commodities  
Corporation, Limited, W. T. Davis, Wm. H.  
Heen, Ernest K. Kai, and Thelma M. Akana.



In the United States District Court for the  
District of Arizona

Minute Entry of Monday, March 22, 1948

(Phoenix Division)

October 1947 Term at Phoenix.

Honorable Dave W. Ling, United States District  
Judge, presiding.

[Title of Cause.]

Motion of defendants W. T. Davis, William H. Heen, Ernest K. Kai, and Thelma M. Akana to Quash Return of Service of Summons and Dismiss Action and Motion of defendant General Commodities Corporation, Ltd., to Quash Return of Service of Summons and Dismiss Action come on regularly for hearing this day. James L. DeSouza, Esquire, and John F. Sullivan, Esquire, appear for the plaintiffs. George H. Rawlins, Esquire and William G. Christy, Esquire, appear for the defendants.

On the motion of John F. Sullivan, Esquire, It Is Ordered that the plaintiff be allowed to amend the complaint by interlineation by adding the words "that said corporation has been continuously and now is doing a substantial portion of its business in the State of Arizona", at the end of line 23 of page one.

George H. Rawlins, Esquire objects to said amendment on the ground that proof of allegation should be made.

Hearing on said Motions to Quash Return of Service of Summons and Dismiss Action is now had.

Frank M. Siegmund is now sworn and cross-examined by counsel for the defendants as an adverse party and is examined in his own behalf.

David H. Caswell is now sworn and examined on behalf of the plaintiff.

Counsel for the plaintiff now files Deposition of William H. Heen and copy of deposition of Glenn C. Taylor, each unsigned, in opposition to motions herein and counsel for the defendants stipulate that said depositions, as filed, are correct.

It Is Ordered that counsel for the plaintiff be allowed to withdraw copy of deposition of Glenn C. Taylor and substitute the original therefor at a later date. [22]

It Is Ordered that the said Motions to Quash Return of Service of Summons and to Dismiss Action be submitted and taken under advisement.

[Title of District Court and Cause.]

The following are the portions of the deposition of William H. Heen referred to in Plaintiff's Designation of Record on Appeal and in Defendant's Designation of Additional Portions of Record on Appeal:

(Page 1)

DEPOSITION OF WILLIAM H. HEEN

(Page 2)

Mr. DeSouza:

Q. Will you state your name please?

A. William H. Heen.

Q. Where do you reside?

A. Honolulu, Hawaii.

Q. You are a citizen of the Territory of Hawaii?

A. That is correct.

(Page 3)

Q. What position, if any, do you hold with the General Commodities Corporation, Limited.

A. I am the president.

Q. How long have you been the president of that corporation?

A. Since the corporation was organized.

Q. When was the corporation organized?

A. My best recollection is it was organized in May, 1947.

Q. Was it organized under and by virtue of the laws of the Territory of Hawaii?

A. That is correct.

(Deposition of William H. Heen.)

Q. The corporation itself is then a resident and citizen of the Territory of Hawaii?

A. I guess that is correct as a matter of law.

(Page 9)

A. Those who formed the corporation were to my best recollection W. T. Davis, also known as W. Thomas Davis; Thelma M. Akana; Ernest K. Kai and myself.

Q. Have any subsidiary corporations or substitute corporations been organized to handle any of the transactions which it was originally [24] contemplated would be handled by General Commodities Corporation, Limited? A. No.

(Page 10)

Mr. DeSouza: Q. How much stock do you own in General Commodities Corporation, Limited?

A. To the best of my recollection 250 shares of common stock of the par value of ten dollars per share, fully paid up.

Q. What is the present book value of your shares? A. I don't know.

(Page 13)

Mr. DeSouza: Q. Where is the office of the General Commodities Corporation located?

The Witness: That is all right with you, counsel?

Mr. Rawlins: Yes, tell him where it is.

The Witness: Honolulu.

Mr. DeSouza: Q. What is the address of the office in Honolulu?

(Deposition of William H. Heen.)

A. 217 Hawaiian Trust Building, Honolulu, Hawaii.

Q. What is the nature and amount—by which I mean the size of the space used by the corporation as its office?

Mr. Rawlins: I instruct you to answer that because that would be germane to the jurisdiction of the court; if he wants to know whether you have an office ten by twelve or 40 by 50 you may tell him.

(Page 14)

A. The office is one single room, I would say about 12 by 18 feet.

Mr. DeSouza: Q. How many employees are in that office?

Mr. Rawlins: May I say working in and out of the office or who have a desk?

Mr. DeSouza: Q. First who have a desk in the office. A. Three.

Q. Is that office in connection with your own office or is it a separate office? A. Separate.

(Page 22)

Q. Is it contemplated that the corporation will pay your travelling expenses?

A. Oh, yes, but I have had to advance some of the travelling expenses.

Q. Is it contemplated that the General Commodities Corporation will pay for your present trip on which you are now in Phoenix?

A. So far as legal fees are concerned, yes.



(Deposition of William H. Heen.)

Q. What about expenses?

A. Oh, yes, expenses too.

Q. You are here in behalf of the corporation?

A. That is right.

Q. And transacting business here on behalf of the corporation?

A. No, we are not conducting any business in Phoenix at all.

(Page 23)

Q. I am merely referring to the fact that you are here for the purpose of engaging in conferences and negotiations on behalf of the corporation.

A. That is right.

(Page 27)

Mr. DeSouza: Q. Have you personally received payment of any money apart from payment to the General Commodities Corporation, Limited, from any sellers or purchasers of commodities purchased or (Page 28) sold by General Commodities Corporation, Limited?

A. I would like to answer that question but I don't want it to appear that we are waiving any rights in this question. I have not.

Mr. Rawlins: Personally he hasn't received anything.

Mr. DeSouza: Q. Has any such payment of money been promised to you or agreed to be paid to you? A. No, not one cent; none at all.

Mr. DeSouza: Q. Where does the General Commodities Corporation bank?

(Deposition of William H. Heen.)

Mr. Rawlins: I advise you to answer for the reason it may be germane on the question of jurisdiction.

A. I will answer that question without waiving any rights. This corporation banks with [26] (Page 29) the Bishop National Bank, Hawaii.

Mr. DeSouza: Q. Does it bank in any other place? A. Yes, the Bank of Guam.

(Page 31)

Mr. DeSouza: Q. Have you ever received any gifts from the General Commodities Corporation, Limited? A. No, no gifts.

Q. Have you ever received any gifts from Mr. W. T. Davis? A. No.

[Endorsed]: Filed Mar. 22, 1948. [27]

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[Title of District Court and Cause.]

The following are the portions of the deposition of Glenn C. Taylor referred to in Plaintiff's Designation of Record on Appeal and in Defendant's Designation of Additional Portions of Record on Appeal:

(Page 1)

DEPOSITION OF GLENN C. TAYLOR

(Page 2)

Mr. DeSouza: It is our intention to take the deposition of Mr. Glenn C. Taylor as an adverse witness.

Mr. Rawlins: Objection is interposed to that

(Deposition of Glenn C. Taylor.)

for the reason there is no foundation either in fact, in pleading or in law. That is a matter to be determined by the District Court. I further object to the taking of Mr. Taylor's deposition because he is a resident of this county and there is no allegation that he is about to disappear or that it is taken for the purpose of preserving his testimony in the event of death.

(Page 6)

Q. Have you ever acted or are you now acting as a trustee for the General Commodities Corporation, Limited?

A. No, I have not and am not now acting in any capacity for General Commodities Corporation, Limited.

Q. Is the Valley National Bank now acting or has it ever acted as a trustee for the General Commodities Corporation, Limited?

A. It has not.

Q. Have you at any time received any moneys, securities, letters of credit or other instruments on behalf of the General Commodities Corporation, Limited?

Mr. Rawlins: Just a minute, object to that for the reason that the issue is whether or not Mr. Siegmund has a contract with General Commodities Corporation, Limited; second, whether or not he can recover, the matter of an accounting and the internal affairs of the corporation are matters to be gone into after the liability of the corporation



(Deposition of Glenn C. Taylor.)

is established. This matter is incompetent, irrelevant and immaterial and further the General Commodities [28] Corporation at this time as well as when counsel first appear, object to this procedure (Page 7) for the reason that the District Court has no jurisdiction over said corporation; for the further reason that the question is for the purpose of annoying, embarrassing or oppressing Mr. Taylor who has heretofore been declared to be an adverse witness and refuse to answer, except the refusal is modified except as to a Yes or No answer. I instruct you as your attorney to answer Yes or No. Will you read the question?

(Pending question read by the Reporter.)

A. Yes.

Mr. DeSouza: Q. Do you now have in your possession any moneys, instruments, letters of credit, securities or other documents of any kind on behalf of the General Commodities Corporation, Limited?

Mr. Rawlins: I make the same objection and instruct Mr. Taylor to answer that question Yes or No.

(Discussion off the record.)

A. I think they have all expired but I am not certain as to that. I will give you that information.

Mr. DeSouza: I will appreciate it very much if you will.

Q. Mr. Taylor, with reference to the (Page 8) conversation which has just taken place I will ask you whether or not you have such instruments which may or may not have expired?

(Deposition of Glenn C. Taylor.)

A. I do, yes.

Q. What is the nature of those instruments?

Mr. Rawlins: Object to that for the reasons heretofore stated, without repeating them.

Mr. DeSouza: Q. I will ask you whether any of those instruments are in the form of letters of credit?

A. Yes—I would say “were” letters of credit perhaps as I am not definitely sure whether they have not expired as to time.

Q. Are those instruments in your possession individually or as an officer of the Valley National Bank? [29]

A. In the possession of myself as vice president of the Valley National Bank.

Q. Do you have any moneys in your hands belonging to the General Commodities Corporation, Limited? A. I have not.

(Page 9)

Q. Does the Valley National Bank have any moneys in its hands belonging to the defendant General Commodities Corporation, Limited?

A. It has not.

Q. Have either you or the Valley National Bank had such moneys in your hands within the last five days? A. We have not.

Q. With reference to the letters of credit which you have just mentioned, by the term “expiration” are you referring to a term included in such letters of credit or are you referring to their expiration by reason of payment?

(Deposition of Glenn C. Taylor.)

(Page 10)

Q. Mr. Taylor, have you or the Valley National Bank paid out any moneys upon such letters of credit to the General Commodities Corporation, Limited? A. I have not.

Q. Have you paid out any moneys or has the Valley National Bank paid out any moneys to Mr. W. T. Davis also known as W. Thomas Davis, Mr. William H. Heen, Mr. Ernest K. Kai or Mrs. Thelma M. Akana?

Mr. Rawlins: Object to the form of that question until counsel clarifies it. If the question means has he paid out any money to these individuals upon letters of credit that run to the General Commodities Corporation, meaning in plain words has he paid out money that belongs to this (Page 11) corporation to any of these individuals upon letters of credit personally so they might be charged with sequestering it.

Mr. DeSouza: I will accept that amendment to the question. [30]

A. I have not.

(Discussion off the record.)

Mr. DeSouza: Q. Have you paid any such moneys to any assignees of such individuals on such letters of credit? A. I have not.

Q. Have you paid any such moneys to any assignee or assignees of General Commodities Corporation, Limited, upon such letters of credit?

A. We have not.

(Deposition of Glenn C. Taylor.)

Q. I take it your answers go both individually and as to the Valley National Bank?

A. That is correct.

(Page 12)

Q. Approximately how many of such letters of credit are there? A. I think one.

Q. One letter of credit?

A. I think that is all we have or have ever had.

(Page 17)

Q. Do you know whether any transaction has been consummated between General Commodities Corporation, Limited, and the Admiralty Trading Company?

(Page 18)

A. Yes.

Q. Has such a transaction been consummated?

A. I will have to refer to that letter of credit. I don't know whether it was ever used or not, I would prefer to look at the document.

Q. Do you know of any transactions between the General Commodities Corporation and anyone, meaning individual, group, corporation or otherwise, regarding tractors and heavy equipment?

Mr. Rawlins: Answer Yes or No.

A. Yes. [31]

(Page 19)

A. Yes.

Mr. DeSouza: Q. With whom is that transaction entered into or has it been entered into?

(Deposition of Glenn C. Taylor.)

A. I don't think I can answer that. We have handled no direct transactions in our bank it would only be a matter of hearsay, I can't answer it definitely.

Q. You don't know with whom?

A. I do not.

(Page 20)

Q. You have referred to a letter of credit expired or unexpired which is now in your hands, and subject to your checking your files you believe you have only one such letter of credit (Page 21) in connection with the General Commodities Corporation. Have you or the Valley National Bank at any time had any other letters of credit in your possession in connection with transactions with the General Commodities Corporation?

A. Yes.

Q. Have payments been made upon such letters of credit or any of them?

A. I can't answer that without reference to the documents.

(Page 22)

Mr. DeSouza: Q. Do either General Commodities Corporation, Limited, or W. T. Davis also known (Page 23) as W. Thomas Davis have any account in the Valley National Bank?

A. They do not.

Q. Have either of them had an account in the Valley National Bank since August 28, 1947?

A. They have not.



[Title of District Court and Cause.]

(Page 1)

DEPOSITION OF  
WILLIAM THOMAS DAVIS

William Thomas Davis, being first duly sworn to testify to the truth, the whole truth and nothing but the truth, was cross examined on behalf of the plaintiff and testified as follows:

Cross Examination

By Mr. DeSouza:

Q. Will you state your name?

A. William Thomas Davis.

Q. Are you also known as W. T. Davis and W. Thomas Davis?

A. I am known as W. T. Davis. I don't know about the W. Thomas.

Q. You are the defendant in this action?

A. That is right.

Q. Mr. Davis, are you acquainted with a [33] corporation known as General Commodities Corporation, Ltd.?

A. Yes.

Q. And when was that corporation organized?

A. I don't remember.

Q. Approximately a year ago, or somewhere thereabouts?

A. I presume it has been in existence some time like that.

Q. Who were the persons who actively participated in the organization of that corporation?

(Deposition of William Thomas Davis.)

A. You mean the people who held the first (Page 2) meeting?

Q. I mean the people who were really materially interested in the corporation.

A. William H. Heen, Ernest K. Kai, Thelma Akana and myself.

Q. Do you hold any office with that corporation?

A. Yes, sir, I am vice-president of it.

Q. You also bear the title of executive director?

A. Not to my knowledge. I am executive vice-president.

Q. Have you held that position since the corporation was organized? A. Yes.

Q. In addition to holding office in the corporation do you also hold a power of attorney from the corporation? A. Yes.

Q. And how long have you held that power of attorney? A. About thirty days. [34]

Q. Have you ever held a power of attorney from the corporation prior to thirty days ago?

A. Yes.

Q. When did you first receive a power of attorney from the corporation?

(Page 3)

A. I don't remember.

Q. Could you say approximately. Was it a month ago or a year ago, as near as you can?

A. I couldn't say approximately. I don't have any idea when I got it.

Q. Have you held power of attorney continu-

(Deposition of William Thomas Davis.)

ously or has there been more than one power of attorney?

A. There has been more than one power of attorney.

Q. How much time elapsed between one power of attorney and the other? A. I don't know.

Q. Were those general powers of attorney or special?

A. I don't recall that, whether they were general or special.

(Page 6)

Q. What is the nature of the assets now held by General Commodities Corporation, Ltd.?

A. I don't know of any assets they have in Arizona.

(Page 12)

Q. Now, as to the deals which have been completed did title to that goods pass to General Commodities Corporation, Ltd.?

A. I don't know.

Q. Well, I will ask you whether the title [35] passed from the appropriative agencies of the Chinese Government to anyone?

A. Upon payment, yes.

Q. To whom did the title pass on those deals?

A. To the buyer, the ultimate buyer.

(Page 13)

Q. And you mean by that, the organizations which purchased the goods from General Commodities? A. That is right.

(Deposition of William Thomas Davis.)

Q. And by your statement, "I don't know" a moment ago, as to whether or not title to passed to General Commodities, do you mean that you don't know whether the title went into General Commodities and then out again or whether the title went directly from the Chinese agencies to the ultimate purchasers? A. That is right.

(Page 20)

Q. Did you discuss that with Judge Heen while he was out here?

A. I don't believe so. I was sick when Judge Heen was here.

Q. You did talk with him, though?

A. On various occasions.

Q. Did you discuss it with either Mr. Kai or Mrs. Akana while they were out here?

A. You mean payment?

Q. Yes, sir.

A. No, I don't believe so. I believe that I did discuss it with Mr. Porter Dunlap of the Bank of America when he was here.

Q. What did Mr. Porter Dunlap of the Bank of America say to you with regard to payment and whether it had been made?

A. Do you mean to the Chinese Government or from the— [36]

Q. To General Commodities from its purchasers.

A. We didn't discuss that phase of it. We were discussing payment to China and how it was to be (Page 21) handled.



(Deposition of William Thomas Davis.)

Q. Who negotiated the transactions we have just been referring to as to price on behalf of General Commodities?

A. What transactions?

Q. The Ken Royce Company, for one.

A. Dave Evans, Bill Day, myself negotiated the Ken Royce transactions.

Q. Who negotiated the Hyman Michaels transaction on behalf of General Commodities?

A. Myself, in San Francisco.

Q. Who negotiated the Bethlehem Steel deal on behalf of General Commodities?

A. I did in Chicago.

Q. And who negotiated the Admiralty Trading Company deal on behalf of General Commodities?

A. George Rawlins in Chicago.

Q. Then on the Ken Royce Company deal, the Hyman Michaels Company deal and the Bethlehem deal you personally participated in negotiations of those deals on behalf of General Commodities?

A. Yes, one of them from Okinawa, one of them from Shanghai and one in San Francisco. Yes, I did that.

(Page 22)

Q. As a matter of fact, Mr. Davis, you personally went on to most of the islands in the South Pacific on which these goods were located and supervised the inventory yourself, did you not?

A. No, sir. I have been on most of the South [37] Pacific Islands but just as an observer. I had nothing to do with inventory.



(Deposition of William Thomas Davis.)

Q. It is true, is it not, that you upon inspection of this equipment fixed the prices for it?

A. No, sir, that was done by Mr. Dave Evans in most cases.

Q. Were you there in company with Mr. Dave Evans?

A. That is right. It was done in Okinawa as I recall.

Q. Did you discuss with him the prices to be fixed upon this merchandise?

(Page 23)

A. On various pieces of it, yes.

(Page 24)

Q. Then, as of this date to the best of your knowledge General Commodities has received payment for nothing in full?      A. That is right.

(Page 25)

Q. Has the Chinese Government been paid off in full on any of that merchandise?

A. Yes, sir.

Q. And who made that payment?

A. Most of the payments were made by the Bank of America of San Francisco.

Q. What was the source of funds from which they made the payments?

A. Letters of credit.

Q. And those were for the account of General Commodities Corporation, Ltd.?

A. Yes, sir.

(Deposition of William Thomas Davis.)

(Page 26)

Q. It is fact, is it not, Mr. Davis, that you are the guiding light of this corporation. You are [38] the person who procured its organization and who has conducted the greater part of its business and formulated its policies?

A. That information is available in Honolulu. I have not formulated its policies. I have been very definitely against some of its policies.

Q. Who, in your opinion, formulates the policies of the corporation? A. The directors.

Q. Are you one of the directors?

A. Yes, sir.

Q. The other directors are Judge Heen, Mr. Kai and Mrs. Akana? A. That is right.

Q. And they have on occasions overridden your recommendations?

A. Very often. I am only a small cog in a wheel out there. I don't have control, if you want to know that. Control is vested in the other (Page 27) three directors.

Q. Have you ever at any time had control of the corporation? A. No, sir.

Q. Have you ever at any time had any greater degree of control than you state that you have at the present time?

A. No, but I have certainly had a lesser degree.

(Page 28)

Q. That is correct. To clarify that, no payment has been made to you as an individual on any of these deals? A. No, sir.

(Deposition of William Thomas Davis.)

Q. Have you ever received any commissions on any of these deals? [39]

A. From General Commodities?

Q. From anyone?

A. Never any commissions, no.

(Page 30)

Q. Getting back to these letters of credit, Mr. Davis, have any of those been posted with the Valley National Bank in Phoenix? A. No, sir.

Q. The Valley National Bank in Phoenix has not to your knowledge ever had in its possession a letter of credit for the benefit of General Commodities Corporation?

A. No, sir. It might have file copies of letters of credit. It has never had an original copy of a letter of credit to my knowledge. What these other directors did when they were up here and I was ill I don't know.

Q. Well, referring particularly to letter of credit from the Admiralty Trading Company, has the Valley National Bank ever had that in its possession?

A. Yes, sir. It has a letter of credit in its possession now.

Q. And that is the original? A. Sir?

Q. That is the original letter of credit?

A. Yes, sir.

Q. And that is payable to General Commodities Corporation?

A. No, sir. It is not payable to the General  
(Page 31) Commodities Corporation.

(Deposition of William Thomas Davis.)

Q. Payable to who?

A. It is payable to W. T. Davis.

Q. What are the circumstances giving rise to the fact that letter of credit is payable to W. T. Davis? [40]

A. That is corporate business and will have to be received from the corporation in Honolulu. I don't have the right to divulge that information.

Q. That is in the nature of a personal payment to you, however? A. No, sir.

Q. Although it is payable to W. T. Davis is it for the actual benefit of General Commodities Corporation? A. It is.

Q. And the proceeds when received by you will be paid to the General Commodities Corporation?

A. The proceeds have already been paid to General Commodities.

(Page 32)

Q. Has the Valley National Bank ever arranged for credit for any customers on any of these deals?

A. No, sir. As a favor to me they lent some of these buyers some money.

Q. What buyers do you refer to?

A. Ken Royce.

Q. And did Ken Royce use that money in making payment to General Commodities?

A. I presume he did.

Q. Was that the understanding as to the purpose of that loan?

(Page 33)

A. It was set up in the form of a credit, yes.

(Deposition of William Thomas Davis.)

Set up in the Crocker First National Bank in San Francisco.

Q. Has any distribution of profits been made to you by General Commodities Corporation?

A. No, sir. [41]

(Page 34)

Q. Have you received any other payment from General Commodities Corporation other than expenses?

A. No. I borrowed some money from General Commodities Corporation.

Q. It is the understanding that is to be repaid to the corporation.

A. That is that letter of credit over in the Valley Bank.

Q. What is the amount of the letter of credit?

A. \$105,000 as I recall. I don't know exactly what it is.

Q. To the best of your knowledge that is the approximate amount?

A. Yes, that is the approximate amount.

(Page 35)

Q. You are in regular telephone communication with the directors in Honolulu, are you not?

A. No, sir. I have talked to Honolulu once in the last six weeks. And then to Jim Burke; I talked to him this morning.

(Page 36)

Q. Do you correspond with the directors of the company?

A. No, sir.



(Deposition of William Thomas Davis.)

(Page 37)

Q. Are you at present exerting your exclusive services toward the dealings of General Commodities Corporation, Ltd.?      A. No, sir.

(Page 38)

Q. Where was the last income tax return filed for which you have any knoweldge as to the place of filing?      A. Honolulu. [42]

Q. Who files the corporate tax returns of General Commodities Corporation?

A. I presume it will be filed by Mr. Gillett.

Q. And do you know where it will be filed?

A. I have no knowledge of anything connected with General Commodities. Being a Hawaiian corporation I imagine it will be filed in Honolulu.

(Page 39)

Q. To your knowledge has General Commodities Corporation ever made any gifts to anyone?

A. Yes, sir.

Q. To whom were those gifts made?

A. To me.

Q. What is the nature of those gifts?

A. One new Chrysler automobile.

Q. Have any subsidiary corporation been formed by General Commodities Corporation?

A. No, sir.

(Page 45)

Q. Do you recall accompanying Frank Siegmund to San Francisco at which time there was negotiation on the Hyman Michaels deal and the Purdy deal and some nail deals?

(Deposition of William Thomas Davis.)

A. I recall very vividly that we were supposed to sell some nails to one of Mr. Siegmund's customers that didn't materialize. And I recall discussing the Hyman Michaels deal which was brought to me by Mr. Ken Royce who needed some help in his joint venture and brought Hyman Michaels into the deal. The Purdy Company deal I recall discussing with Mr. Ferris who brought it to us and who incidentally claims a five percent commission on it, when it is made, in San Francisco while Frank Siegmund was there. [43]

Q. Now, do you recall negotiating a contract with Frank regarding sales of any deals on behalf of General Commodities? A. Yes, sir.

(Page 46)

Q. And pursuant to those negotiations such a contract was entered into?

A. Yes, sir. And under the terms of that contract the first deal that I got was for bacon and I want somebody to pay me for my bacon. That is all I want.

Q. Has Frank Siegmund performed any of his obligations under that contract?

A. Not to my knowledge.

Q. Is it your understanding then General Commodities does not intend to pay Frank anything.

A. That could be determined in Honolulu and only in Honolulu. The directors meet out there (Page 47) and any claim that he has would have to be filed with them and approved by them.

Q. You don't know of your own knowledge that

(Deposition of William Thomas Davis.)

they owe him anything?           A. No, sir.

Q. You signed this contract in San Francisco with Frank, however?           A. That is right.

Q. Now, on final negotiations of these deals did you permit anyone other than yourself to make (Page 48) those final negotiations and close the deals?

A. I only know that I was called by Dorothy Westrope, Frank Siegmund's secretary, who informed me that Frank Siegmund had a \$30,000,000 letter of [44] credit in the First National Bank in Chicago, and that the purchasing agent for the Japanese Government was there, and insisted that I go immediately to Chicago, which I refused to do repeatedly, having three or four boatloads of materials and equipment coming into the West Coast. But finally after much persuasion I went to Chicago. I was greeted by two Jew brokers who took me to some hotel in Chicago and informed me that their purchaser with this \$30,000,000 letter of credit would see me at two o'clock in the afternoon, and that he was the top man with Mitsubi. They had the money; they had given this \$30,000,000 to buy from us all the equipment on the island of Manus. I met this so-called purchasing agent the next morning at ten o'clock, having a desire to see the horses run that afternoon, I went to the horses that afternoon. When I met this so-called purchasing agent for the Japanese Government it turned out that he was a little guy that I had known on the West Coast for many years, a hust-

(Deposition of William Thomas Davis.)

ler, who had never had \$2,000 at any one time in his (Page 49) life, in my belief. And that all he wanted was front money; that I ended up giving him \$700 front money personally. Now, if that constitutes any basis for all this action then you have a basis for action.

Q. Did you contact the Continental Illinois Bank in Chicago to confirm that deal?

A. I did.

Q. What was their answer?

A. They told me that Mr. William O'Neil was a man who probably could raise \$50,000, that he was company trustee under his father's will; that his [45] father had been a very successful man and that they probably would lend him, if conditions were exactly right, not to exceed \$50,000. The record of that conversation and their reply is available for this statement in Honolulu. It is in our file out there. In other words, they were trying to buy \$30,000,000 worth of equipment with a broken down Jap front money artist, and a man who could raise \$50,000 if he was hard pressed, but who had no inclination to raise it in the first place.

Q. Who was the Japanese in question?

A. Charley Onishi.

Q. Did you advise the Continental Illinois Bank in Chicago that Frank Siegmund was your sole (Page 50) representative in the United States?

A. No, sir, to my remembrance. I might have said he represented us.

Q. Have you had any further negotiations with Mr. Onishi since that time?



(Deposition of William Thomas Davis.)

A. Yes, we hired him to do a job for us. He is a pretty fair artist when it comes to getting money, I will tell you that.

Q. And what was the nature of the job for which he was hired?

A. For your information we contemplate doing some business in Indonesia and he at my request went to New York to conclude some business with the Indonesian representative Doctor Sometro Djojo Cosimio.

Q. Was that Indonesian transaction also discussed or brought up on the occasion in Chicago when you went back there? [46]

A. I told Charley Onishi that the Indonesians were ready to do some business.

Q. Have you or has the corporation concluded any deal with the Indonesians? A. No, sir.

Q. Has such a deal been in process of negotiation? A. It has.

Q. It is a fact, is it not, that certain of (Page 51) these Indonesian representatives came to Phoenix a month or so ago for the purpose of negotiating that transaction?

A. No, sir, they came as my guests to visit me while I was ill, which is a common custom in the Orient. I have a guest at my house now from Shanghai.

Q. On the occasion we have referred to in Chicago did you also meet Mr. Kaplan?

A. No, sir, I didn't meet Mr. Kaplan in Chicago.



(Deposition of William Thomas Davis.)

Q. Was any discussion had at that time regarding Mr. Kaplan?

A. I think Mr. Kaplan called me or talked to me over the phone and asked to meet me. I didn't have time to stay and meet him.

Q. Did you discuss any deal with him over the phone? A. I don't recall.

Q. At the time when these Indonesians were here, as you say, as your guests, or whatever capacity they were here, were Mr. Heen, Mr. Kai and Mrs. Akana also here? A. Yes.

Q. Was there any negotiation between those parties to your knowledge? [47]

(Page 52)

A. No, sir, no negotiations.

Q. No discussions?

A. No discussions; purely a social visit to acquaint them with our country.

Q. Now, getting back to Chicago and this occasion for a moment, do you recall having an afternoon meeting at the Blackstone Hotel with Kaplan and Purdy?

A. Yes, I recall a meeting. I don't think Bert Kaplan was there, he might have been. Jack Purdy, Sparrow Purdy and Jack Duffy as I recall. I don't know. He wanted to see me.

Q. How long have you been in Phoenix?

A. I came here the 24th of December, 1947.

Q. Have you been here continuously since that time? A. Yes, sir.

Q. Did Mr. Kaplan and Mr. Purdy or either of them ever fly out here to Phoenix to meet you?

(Deposition of William Thomas Davis.)

A. Yes, they were here not long ago.

Q. And that was in connection with discussions of some of these deals?

A. Yes. Jack was out to the Biltmore. He came down to see me. And he had breakfast with me one morning, I believe. And Jack was out here last time when I was sick.

(Page 53)

Q. You were taken sick some time after you arrived in Phoenix, were you not?

A. That is right.

Q. While you were in Phoenix you kept in active touch with all of these deals, have you not?

A. Well, my part of them, yes, as far as loading equipment and supervising the field operations I have done that, yes. I hired a General Manager [48] from over in California and sent him out there to handle the operation for me and he has handled it and from time to time I have contacted him.

Q. Are you acquainted with a Mr. Tunneson?

A. Yes, sir, I met Mr. Tunneson.

Q. And was that in connection with any transactions of General Commodities?

(Page 54)

A. Well, Mr. Tunneson was another one of those individuals who could do a lot of talking but not much producing.

Q. Was he an independent hustler or did he represent some purchaser?

A. I don't know who he represented. I only know he went out to the Pacific at the request of

(Deposition of William Thomas Davis.)

Frank over in San Francisco. We cleared him clear to the Pacific Ocean. He went out and bought thirty-one pieces of equipment for himself.

(Page 55)

Q. Has Onishi been instrumental in promoting any deals which have been closed?

A. No, sir. I have got a substantial investment in Mr. Onishi which I will be glad to give you for your lawsuit.

Q. Has there been any conferences or discussions—

A. I want to be perfectly fair with you. You have asked me a lot of questions that you apparently are not sure of the answers. I am going to tell you: Mr. F. T. Lee came to see me as my friend. He is a very good friend of mine. He left for New York and in New York I understand he is doing some negotiations. They are not here; no part of them are here. He came to visit me and while he was visiting I told him of some difficulties we [49] were having in the contract and asked him when he (Page 56) was back there if he could straighten it out with them, we would appreciate it.

Mr. De Souza: That is all.

Examination by Mr. Rawlins:

Q. Mr. Davis, you came back from Shanghai on the 24th of December and took quarters in the Westward Ho Hotel, is that correct?

A. That is right.

Q. You stayed there about a week during which time you were ill and under a doctor's care and

(Deposition of William Thomas Davis.)

nurse's care, is that right? A. That is right.

Q. Then you went over to Los Angeles and to San Francisco on business trips?

A. That is right.

Q. Then you returned about the 10th of January, or somewhere along in there, to the Westward Ho Hotel in Phoenix here?

(Page 57)

A. I came back December 24th.

Q. I mean after you had been to Los Angeles around New Years. A. Yes.

Q. You came back here about the middle of January? A. That is right.

Q. You came back here and were under the care of Doctor Ehrlich? A. That is right.

Q. And then you were taken to the Good Samaritan Hospital? A. That is right. [50]

Q. When did you enter the Good Samaritan Hospital? A. I don't recall.

Q. How long were you there?

A. About two months.

Q. And then you rented this house temporarily and continued under the care of this doctor?

A. That is right.

Q. Does the General Commodities Corporation have an office here in Phoenix? A. No, sir.

Q. A telephone? A. No, sir.

(Page 58)

Q. Is there any contract in existence this day that had been entered into in Phoenix?

A. No, sir.



(Deposition of William Thomas Davis.)

Mr. De Souza: At this time we would like the record to show the deposition has been completed; that we consider the deposition to be completed. We have asked all of our questions and we are now leaving.

Q. There is no contract in existence signed in Phoenix, Arizona? A. No, sir.

Q. One was signed in Shanghai and one in Chicago?

A. No, no—yes, many contracts in Shanghai.

Q. There has been no business done by the corporation here? A. No.

[Endorsed]: Filed Apr. 5, 1948. [51]

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In the District Court of the United States  
for the District of Arizona

Minute Entry of Friday, April 30, 1948

(Phoenix Division)

April 1948 Term at Phoenix.

Honorable Dave W. Ling, United States District Judge, presiding.

[Title of Cause.]

It is ordered that defendants, General Commodities Corporation, W. T. Davis, Wm. H. Heen, Ernest K. Kai and Thelma M. Akana, be granted leave to file an Amended Motion to Quash Return of Service of Summons and to Dismiss Action herein. [52]



[Title of District Court and Cause.]

AMENDED MOTION OF W. T. DAVIS, WM.  
H. HEEN, ERNEST K. KAI AND THELMA  
M. AKANA TO QUASH RETURN OF  
SERVICE OF SUMMONS AND DISMISS  
ACTION.

Come now the defendants, W. T. Davis, William H. Heen, Ernest K. Kai and Thelma M. Akana, and move the Court as follows:

I.

To dismiss said action as to these defendants upon the grounds that the above-entitled Court is without jurisdiction of said action, in that the defendants, General Commodities Corporation, Limited, is a corporation organized and existing under the laws of the Territory of Hawaii, and the defendants, Wm. H. Heen, Ernest K. Kai and Thelma M. Akana, are all citizens and residents of said Territory of Hawaii, and that none of said named defendants are residents or citizens of any state, and said action is not a controversy between citizens of different states, all of which more clearly appears in the memorandum of points and authorities filed herewith.

II.

To dismiss the action upon the grounds that the above-entitled Court should refuse to accept jurisdiction of said action in that the primary defendant therein, General Commodities Corporation, Limited, is a foreign corporation not engaged in business in the State of Arizona, and that the sub-

ject matter of said action and the relief prayed for therein pertain entirely to the internal affairs of said defendant corporation; that none of the transactions referred [53] to in the complaint took place within the jurisdiction of the above-entitled Court; that all of the defendants are non-residents of the State of Arizona, all of which more clearly appears in the memorandum of points and authorities filed herewith.

**III.**

To dismiss the action because the complaint fails to state a claim against these defendants, or any of them, upon which relief can be granted, all of which more clearly appears in the memorandum of points and authorities filed herewith.

**RAWLINS, DAVIS,  
CHRISTY & KLEINMAN,**

**By WILLIAM G. CHRISTY,**  
Attorneys for the defendants, W. T. Davis, Wm.  
H. Heen, Ernest K. Kai and Thelma M. Akana.

Received copy this 30th day of April, 1948.

**JAMES L. DeSOUZA,**  
Attorneys for Plaintiff.

[Endorsed]: Filed Apr. 30, 1948. [54]

[Title of District Court and Cause.]

AMENDED MOTION OF GENERAL COMMODITIES CORPORATION, LTD., TO QUASH RETURN OF SERVICE OF SUMMONS AND DISMISS ACTION.

Comes now the General Commodities Corporation, Limited, an Hawaiian Corporation, and moves the Court as follows:

I.

To dismiss said action upon the grounds that the above-entitled Court is without jurisdiction of said action, in that this defendant is a corporation organized and existing under the laws of the Territory of Hawaii, and the defendants, Wm. H. Heen, Ernest K. Kai and Thelma M. Akana, are all citizens and residents of said Territory of Hawaii, and that none of said named defendants are residents or citizens of any state, and said action is not a controversy between citizens of different states, all of which more clearly appears in the memorandum of points and authorities filed herewith.

II.

To dismiss the action upon the grounds that the above-entitled Court should refuse to accept jurisdiction of said action in that the subject matter of said action and the relief prayed for therein pertain entirely to the internal affairs of this defendant, a foreign corporation, and that none of the transactions referred to therein took place within the jurisdiction of the above-entitled Court, all of

which more clearly appears in the memorandum of points and authorities filed therewith. [55]

III.

To quash the return of service of summons and the purported service of summons on this defendant, and to dismiss the action as against this defendant on the grounds that this defendant is a corporation organized under the laws of the Territory of Hawaii, and has not, and is not doing business in the State of Arizona, and was not and is not subject to service of process within the District of the State of Arizona, and that this defendant has not been properly served with process in this action, and that the Court is without jurisdiction over this defendant, all of which more clearly appears in the memorandum of points and authorities filed herewith.

RAWLINS, DAVIS,  
CHRISTY & KLEINMAN,

By WILLIAM G. CHRISTY,  
Attorneys for Defendant, General Commodities  
Corporation, Limited.

Received copy this 30th day of April, 1948.

JAMES L. DeSOUZA,  
Attorneys for Plaintiff.

[Endorsed]: Filed Apr. 30, 1948. [56]



[Title of District Court and Cause.]

AFFIDAVIT

State of Oregon,  
County of Mult.—ss.

Marvin Heaney, being first duly sworn on oath deposes and says:

That he is a resident of the City of Portland in the State of Oregon; that some time during the month of December, 1947, your affiant was advised by William O'Neil of the City of Chicago, that the General Commodities Corporation, Limited, through W. Tom Davis, Vice President and Executive Director of said corporation, was in a position to handle the sale and disposal of war surplus materials owned by the Republic of China. That your affiant thereupon made some contact with the Indonesian Government representatives in this country relative to the purchase of said war surplus materials. That your affiant called W. Tom Davis, Vice President and Executive Director of the General Commodities Corporation, Limited, via long distance telephone at the Westward Ho Hotel in Phoenix, Arizona and was advised by the said W. Tom Davis to come to Phoenix to negotiate and close any deal concerning the sale of war surplus materials through General Commodities Corporation, Limited.

Further your affiant sayeth not.

MARVIN HEANEY.

Subscribed and sworn to before me this 18th day of March, A. D. 1948.

(Seal)

HELEN HANNA,

Notary Public.

My commission expires Jan. 19, 1951. [57]



[Title of District Court and Cause.]

AFFIDAVIT

State of Illinois,  
County of Cook—ss.

Homer Stevenson, being first duly sworn on oath deposes and says:

That he is a resident of the Village of Oak Park, County of Cook and State of Illinois; that on or about the first day of September, 1947, through a mutual friend, namely one Dave Caswell, he was contacted as a partner of H. & H. Associates & Co. of River Forest, Illinois, relative to the disposal of certain war surplus materials owned by the Republic of China on the Islands of Manus and Guam in the Pacific Ocean; that at that time, Mr. Dave Caswell represented that one Frank Siegmund of Phoenix, Arizona, was the exclusive sale representative in the United States for the General Commodities Corporation, Limited, for the sale and disposal of said war surplus materials. That shortly thereafter, your affiant contacted, via long distance telephone, Frank Siegmund at Phoenix, Arizona and was advised that the General Commodities Corporation, Limited, whom he represented, was in a position to consummate contracts for the disposal of war surplus commodities owned by the Republic of China. That thereupon, your affiant asked for references and [58] was instructed to contact The Valley National Bank of Phoenix, Arizona; that subsequently thereto, your affiant contacted Mr. Glen C. Taylor of the Valley Na-

tional Bank at Phoenix, Arizona and was advised by Mr. Glen C. Taylor that he and the bank were thoroughly familiar with General Commodities Corporation, Limited, and that its vice president and executive director, W. T. Davis, was in Phoenix, and that his reputation for honesty and fair dealing was above reproach. That the General Commodities Corporation, Limited, had numerous letters of credit on deposit at The Valley National Bank and that all other letters of credit and negotiations concerning the General Commodities Corporation should be put through Mr. Taylor and The Valley National Bank at Phoenix, Arizona.

That subsequently thereto, on to-wit, October 11, 1947, your affiant met W. Thomas Davis, Vice President and Executive Director of the General Commodities Corporation at the Chicago, Illinois, airport and was introduced to him by Mr. Dave Caswell. That your affiant drove Mr. W. Tom Davis to the Blackstone Hotel in Chicago, Illinois; that W. Tom Davis thereupon stated that he was tired of traveling and that he had made all of the arrangements on the Islands and that he would be available at Phoenix, Arizona for the negotiation and consummation of any deals involving the sales of war surplus materials owned by the Republic of China; that thereupon, your affiant together with his group was to meet Mr. W. Tom Davis the following Sunday morning to discuss the entire war surplus situation. That subsequently thereto, on to-wit, October 12, 1947, in Room 1716 in the Blackstone Hotel in Chicago, Illinois your

affiant in the presence of Frank Siegmund, David Caswell, F. Harold Brasie, William O'Neil, Frank Smith, Charles Onishi and E. T. Moore had a preliminary discussion concerning the situation; that at that time a list of the materials on the Island of Tinia in the Pacific Ocean was given to your affiant to have a public stenographer make a copy thereof. That after the discussion [59] and before the close of the meeting, Mr. W. Tom Davis stated, "I assume that all of you are protected on your interest and commissions as I do not want any law suits, and when you have any parties or persons for the purchase of any of the war surplus materials, make arrangements to come to Phoenix to close the deal. I insist that all letters of credit must clear through The Valley National Bank at Phoenix, Arizona. I can be reached at the Westward Ho Hotel in Phoenix, Arizona, or through Frank Siegmund or Mr. Glen C. Taylor of The Valley National Bank".

Further your affiant sayeth not.

/s/ HOMER STEVENSON.

Subscribed and sworn to before me this 18th day of March, A. D. 1948.

(Seal) IMOGENE D. SMITH,

Notary Public.

My commission expires: Dec. 5, 1948.

[Endorsed]: Plaintiff's Memorandum of Points Authorities in opposition to Amended Motions of Defendants to Quash Return of Service of Summons and Dismiss Action, and Affidavits of Marvin Heaney and Homer Stevenson. Filed May 6, 1948.

## United States District Court

Office of the Clerk

District of Arizona

Phoenix, Arizona, May 18, 1948

The Attorney General,  
Washington, D. C.

Sir:

Re: Civ-1142 Phoenix, Frank M. Siegmund vs.  
General Commodities Corporation, Limited,  
an Hawaiian Corporation, et al.

I enclose herewith original certificate of the judge of this court under the Act of August 24, 1937, signed by the judge of this court as of this date.

I also enclose copies of the following pleadings as provided in the certificate:

1. Complaint, filed February 17, 1948.
2. Amended Motion to Dismiss of Defendant General Commodities Corporation, filed April 30, 1948.
3. Amended Motion of Defendant W. T. Davis, et al. to Dismiss, filed April 30, 1948.
4. Defendants' Memorandum in Support of Defendants' Motions to Dismiss, filed April 30, 1948.
5. Plaintiff's Memorandum in Opposition of Amended Motion to Dismiss, filed May 6, 1948.

Respectfully,

WM. H. LOVELESS,  
Clerk. [61]



[Title of District Court and Cause.]

CERTIFICATE UNDER THE ACT OF  
AUGUST 24, 1937

1. The Court, under the Act of August 24, 1937 (Title 28, Section 401, United States Code) hereby certifies to the Attorney General of the United States that the constitutionality of the Act of April 20, 1940 (Title 28, Section 41, sub-section (1)), is drawn in question in this action, to which neither the United States, any agency, nor any officer or employee thereof as such is a party.

2. The constitutionality of said Act is drawn in question in the following manner, to-wit: Defendants contend and will contend that said Act, which is pleaded in defendants motions to dismiss as exceeding the authority granted Congress in Article III, Section 2, of the Constitution, is unconstitutional, and that the Federal Courts have no jurisdiction in cases of alleged diversity of citizenship between citizens of states, and citizens of territories.

3. The Clerk of this Court is hereby directed forthwith to forward to the Attorney General of the United States this certificate, together with one copy of the pleadings herein.

4. If response is not made to this certificate within thirty days after mailing thereof and the pleadings to the Attorney General of the United States, the United States, unless cause shall be



shown, shall be deemed to have determined not to intervene in this action.

Dated at Phoenix, Arizona, this 18th day of May, 1948.

DAVE W. LING,  
United States District Judge.

[Endorsed]: Filed May 18, 1948. [62]

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Department of Justice  
Washington 25, D. C. hjd  
June 14, 1948

HGM:HIR 143-8-4

William H. Loveless, Esquire  
Clerk, United States District Court  
Phoenix, Arizona

Re: Frank M. Siegmund v. General Commodities Corporation, Limited, an Hawaiian Corporation, et al. In the United States District Court for the District of Arizona. No. Civ-1142 Phoenix.

Dear Mr. Loveless:

We have your letters of May 18 and May 20, 1948, enclosing the Court's certificate issued under the Act of August 24, 1937, certifying that the constitutionality of the Act of April 20, 1940, c. 117, 54 Stat. 143, has been drawn in question in this proceeding, and also enclosing copies of various pleadings in the case.

The Government does not desire to intervene in this case. It will, however, undoubtedly be of in-

terest to the Court that the very question raised here—the constitutionality of the 1940 statute—is also in issue in *National Mutual Insurance Company of the District of Columbia v. Tidewater Transfer Company, Inc.*, in the Supreme Court of the United States, No. 640, October Term, 1947. A writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit was granted in that case on March 29, 1948, in response to a petition filed by the insurance company, and a memorandum submitted by the Solicitor General for the United States as *amicus curiae*. It is contemplated that that case will be heard in the Supreme Court early in the 1948 Term, and the Government intends to submit a brief as *amicus curiae* in support of the 1940 statute. We shall be glad to send copies of the Government's brief in the case to you if the Court so desires.

Sincerely yours,

For the Attorney General:

/s/ H. G. MORISON,  
Assistant Attorney General.

[Endorsed]: Filed June 19, 1948. [63]

In the United States District Court for the  
District of Arizona

Civ.—1142—Phoenix

FRANK M. SIEGMUND,

Plaintiff,

vs.

GENERAL COMMODITIES CORPORATION,  
LIMITED, an Hawaiian Corporation, W. T.  
DAVIS, also known as W. THOMAS DAVIS,  
THE BLACK CORPORATION, THE WHITE  
CORPORATION, WM. H. HEEN, ERNEST  
K. KAI and THELMA M. AKANA,

Defendants.

### ORDER

This cause is dismissed for want of jurisdiction as to defendants General Commodities Corporation, Limited, an Hawaiian Corporation, Wm. H. Heen, Ernest K. Kai and Thelma M. Akana, the Court being of the opinion that the Act of Congress passed in 1940, 28 U.S.C.A. 41, amending Section 24, Subdivision 1 of the Judicial Code, is unconstitutional.

The Motion to Quash Return of Service of Summons and Dismiss Action as to defendant W. T. Davis, is denied.

It is so ordered.

Dated July 3, 1948.

DAVE W. LING,  
United States District Judge.

[Endorsed]: Filed and docketed July 3, 1948.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that the above named plaintiff, Frank M. Siegmund, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that portion of the order entered in this action on the 3rd day of July, 1948 dismissing this cause for want of jurisdiction as to the defendants, General Commodities Corporation, Limited, an Hawaiian Corporation, and Wm. H. Heen, Ernest K. Kai and Thelma M. Akana.

JAMES L. DeSOUZA and  
JOHN F. SULLIVAN,  
By JOHN F. SULLIVAN,  
Attorneys for Appellant, Frank  
M. Siegmund.

[Endorsed]: Filed July 23, 1948. [65]

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[Title of District Court and Cause.]

STIPULATION AND MOTION FOR EXTENSION OF TIME TO FILE RECORD ON APPEAL AND DOCKET APPEAL AND FOR FIXING OF TIME, AND ORDER EXTENDING AND FIXING TIME.

### STIPLATION AND MOTION

Come now the Plaintiff and Appellant, Frank M. Siegmund, and the Defendant and Appellant, W. T. Davis, also known as W. Thomas Davis, and the Defendants and Appellees, General Commodi-

ties Corporation, Limited, Wm. H. Heen, Ernest K. Kai, and Thelma M. Akana, by their respective counsel, and stipulate that additional time is necessary for the parties to file their record on appeal and docket their respective appeals to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, and move the Court for an Order extending time and fixing the time for filing record on appeal and docketing their respective appeals in the above entitled cause, and that the time fixed therefor be the 13th day of October, 1948.

Dated this 28th day of August, 1948.

JAMES L. DeSOUZA and

JOHN F. SULLIVAN,

By JAMES L. DeSOUZA,

Attorneys for Plaintiff and Appellant Frank M. Siegmund. [66]

RAWLINS, DAVIS, CHRISTY  
& KLEINMAN,

By COMAR J. KLEINMAN,

Attorneys for Defendant and Appellant, W. T. Davis, also known as W. Thomas Davis, and for Defendants and Appellees General Commodities Corporation, Ltd., Wm. H. Heen, Ernest K. Kai and Thelma M. Akana.

### ORDER

The Court having read the foregoing stipulation and motion, and good cause appearing therefor,

It is hereby ordered that the time for filing



record on appeal and docketing appeal in the above-entitled action in the United States Circuit Court of Appeals for the Ninth Circuit is hereby extended to, and said time is hereby fixed at, the 13th day of October, 1948, including said day.

Dated this 30th day of Aug., 1948.

HOWARD C. SPEAKMAN,  
District Judge.

[Endorsed]: Order filed Aug. 31, 1948.

[Endorsed]: Stipulation and Motion filed Aug. 28, 1948. [67]

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[Title of District Court and Cause.]

STATEMENT OF POINTS TO BE RELIED ON  
BY PLAINTIFF APPELLANT FRANK M.  
SIEGMUND ON APPEAL.

The plaintiff having taken his appeal to the United States Court of Appeals for the Ninth Circuit, from the order dismissing the above entitled cause made and entered on July 3, 1948, by the District Court of the United States for the District of Arizona hereby designates the following points to be relied upon in the prosecution of said appeal:

1. The District Court erred in dismissing this action as against the Defendants General Commodities Corporation, Limited, an Hawaiian corporation, Wm. H. Heen, Ernest K. Kai and Thelma M. Akana.

2. The District Court erred in concluding that

the Act of Congress passed in 1940, 28 U.S.C.A. 41, amending Section 24, Subdivision 1, of the Judicial Code, is unconstitutional.

Dated this 27th day of September, 1948.

JAMES L. DeSOUZA and  
JOHN F. SULLIVAN,

By JAMES L. DeSOUZA,  
Attorneys for Plaintiff and  
Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed Sept. 27, 1948. [68]

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[Title of District Court and Cause.]

PLAINTIFF AND APPELLANT FRANK M.  
SIEGMUND'S DESIGNATION OF RECORD  
ON APPEAL.

The plaintiff designates the following portions of the record in the above-entitled and numbered cause to be transmitted to the United States Court of Appeals for the Ninth Circuit, as the record of appeal in the above entitled cause:

1. Plaintiff's Complaint as amended by interlineation on March 22, 1948.

2. Minute entry of District Court Order of March 22, 1948, allowing amendment of Complaint by interlineation.

3. Summons with Marshall's return of Service upon defendants General Commodities Corporation, Limited, an Hawaiian corporation, W. T. Davis,

also known as W. Thomas Davis, William H. Heen, Ernest K. Kai and Thelma M. Akana.

4. Portions of deposition of Wm. H. Heen filed March 22, 1948, as follows:

- Page 2, line 19, to page 3, line 6, inclusive;
- Page 9, line 5 to line 8, inclusive;
- Page 13, line 15, to page 14, line 2, inclusive;
- Page 22, line 12, to page 23, line 6, inclusive;

5. Portions of deposition of Glen C. Taylor, filed March 22, 1948, as follows: [69]

- Page 6, line 12, to page 8, line 18, inclusive;
- Page 17, line 23, to page 18, line 5, inclusive;
- Page 20, line 23, to page 21, line 10, inclusive;

6. Portions of deposition of W. T. Davis, also known as W. Thomas Davis, filed April 5, 1948, as follows:

Unnumbered opening page, lines 11 to 26, inclusive;

- Page 1, line 1, to page 3, line 17, inclusive;
- Page 20, line 6, to page 21, line 24, inclusive;
- Page 22, line 10, to page 23, line 1, inclusive;
- Page 30, line 15, to page 31, line 20, inclusive;
- Page 32, line 16, to page 32, line 24, inclusive;
- Page 34, lines 6 to 19, inclusive;
- Page 39, lines 5 to 11, inclusive;
- Page 45, lines 5 to 19, inclusive;
- Page 47, line 25, to page 53, line 11, inclusive;
- Page 53, line 23, to page 54, line 10, inclusive;
- Page 55, lines 5 to 8, inclusive;
- Page 55, line 15, to page 56, line 3, inclusive.

7. Portions of Reporter's transcript of Hearing on Motions to quash return of service of Summons and dismiss action before the District Court, March 22, 1948, as follows:

Page 4, line 10, to page 38, line 26, inclusive.

8. Affidavit of Frank M. Siegmund, filed March 15, 1948.

9. Affidavit of Marvin Heaney, filed May 6, 1948.

10. Affidavit of Homer Stevenson, filed May 6, 1948.

11. Order of Dismissal dated July 3, 1948.

12. Notice of Appeal of Frank M. Siegmund, filed July 23, 1948.

13. Stipulation, Motion, and Order for extension of time to file record on Appeal and docket Appeal, and fixing time, filed August 31, 1948.

14. This designation of record. [70]

Dated this 27th day of September, 1948.

JAMES L. DeSOUZA and  
JOHN F. SULLIVAN,

By /s/ JAMES L. DeSOUZA,  
Attorneys for Plaintiff and  
Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed Sept. 27, 1948. [71]



[Title of District Court and Cause.]

DEFENDANTS' DESIGNATION OF ADDITIONAL PORTIONS OF RECORD REQUIRED ON APPEAL.

The defendants, General Commodities Corporation, Limited, Wm. H. Heen, Ernest K. Kai and Thelma M. Akana, hereby designate the following additional portions of the record to be contained in the record on appeal to the Circuit Court of Appeals of the Ninth Circuit, to-wit:

1. Affidavit of W. T. Davis in Support of Motions to Quash Return of Service and to Dismiss Action, filed on the 8th day of March, 1948;

2. Order granting Defendants leave to file Amended Motions to Quash Return of Summons and to Dismiss Action, filed on the 30th day of April, 1948;

3. Amended Motion of defendant, General Commodities Corporation, Ltd., to Quash Return of Service of Summons and Dismiss Action, filed on the 30th day of April, 1948;

4. Amended Motion of Defendants, W. T. Davis, Wm. H. Heen, Ernest K. Kai and Thelma M. Akana, to Quash Return of Service of Summons and Dismiss Action, filed on the 30th day of April, 1948;

5. Letter of Clerk and Certificate of Judge of said Court dated May 18, 1948, and filed same date, forwarded to Attorney General of the United

States, in regard to constitutionality of a Federal Act being raised in said action; [72]

6. Reply of Attorney General of the United States declining to intervene on behalf of the United States in said action, filed on the 19th day of June, 1948;

7. Portions of deposition of Wm. H. Heen, filed on the 22nd day of March, 1948, as follows:

Page 3, lines 7 to 15, inclusive;  
Page 9, lines 9 to 14, inclusive;  
Page 10, lines 18 to 25, inclusive;  
Page 13, lines 9 to 14, inclusive;  
Page 14, lines 3 to 12, inclusive;  
Page 27, lines 23 to 26, inclusive;  
Page 28, lines 1 to 10, inclusive;  
Page 28, lines 20 to 26, inclusive;  
Page 29, lines 1 to 4, inclusive;  
Page 31, lines 9 to 15, inclusive;

8. Portions of deposition of Glenn C. Taylor, filed on the 22nd day of March 1948, as follows:

Page 2, lines 15 to 26, inclusive;  
Page 6, lines 2 to 11, inclusive;  
Page 8, lines 23 to 26, inclusive;  
Page 9, lines 1 to 15, inclusive;  
Page 10, lines 11 to 26, inclusive;  
Page 11, lines 1 to 18, inclusive;  
Page 12, lines 3 to 8, inclusive;  
Page 18, lines 21 to 26, inclusive;  
Page 19, lines 1 to 9, inclusive;

Page 22, lines 25 and 26;

Page 23, lines 1 to 6, inclusive;

9. Portions of deposition of William Thomas Davis, filed on the 5th day of April, 1948, as follows:

Page 6, lines 10 to 13, inclusive;

Page 12, lines 17 to 26, inclusive;

Page 13, lines 1 to 11, inclusive;

Page 24, lines 23 to 26, inclusive;

Page 25, lines 1 to 12, inclusive;

Page 26, lines 6 to 26, inclusive;

Page 27, lines 1 to 8, inclusive;

Page 28, lines 3 to 11, inclusive;

Page 30, lines 2 to 14, inclusive;

Page 32, lines 25 and 26;

Page 33, lines 1 to 3, inclusive;

Page 33, lines 11 to 13, inclusive;

Page 35, lines 22 to 26, inclusive;

Page 36, lines 1 to 3, inclusive;

Page 37, lines 10 to 13, inclusive;

Page 38, lines 8 to 18, inclusive;

Page 39, lines 22 to 24, inclusive;

Page 45, lines 23 to 26, inclusive;

Page 46, lines 1 to 9, inclusive;

Page 46, lines 24 to 26, inclusive;

Page 47, lines 1 to 8, inclusive; [73]

Page 56, lines 5 to 16, inclusive;

Page 56, lines 24 to 26, inclusive;

Page 57, lines 1 to 26, inclusive;

Page 58, lines 1 to 17, inclusive;

10. This designation of additional portions of record on appeal.

Dated this 5th day of October, 1948.

RAWLINS, DAVIS, CHRISTY  
& KLEINMAN,

By WILLIAM G. CHRISTY,  
Attorneys for Defendants, General Commodities  
Corporation, Limited, Wm. H. Heen, Ernest K.  
Kai and Thelma M. Akana.

(Acknowledgment of Service.)

[Endorsed]: Filed Oct. 5, 1948. [74]

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[Title of District Court and Cause.]

### ORDER

It appearing to the Court that the Plaintiff's Notice of Appeal was filed herein on July 23, 1948, and that the time for filing the record on appeal and docketing the appeal in the United States Court of Appeals for the Ninth Circuit has heretofore been extended to and including October 13, 1948, and,

It further appearing to the Court that the Plaintiff's Designation of Record on Appeal was not filed herein until September 27, 1948, and that the Defendant's time within which to serve and file a designation of additional portions of the record, proceedings and evidence to be included, will not expire until October 7, 1948, and that the Clerk of this Court cannot prepare the record on appeal



until after the expiration of such time and transmit the same to the Court of Appeals for filing and docketing on or before October 13, 1948,

It is ordered that the Plaintiff's time within which to file the record on appeal and docket the appeal in the United States Court of Appeals for the Ninth Circuit be and it is extended to and including October 21, 1948.

Dated this 1st day of October, 1948, at Phoenix, Arizona.

DAVE W. LING,  
United States District Judge.

[Endorsed]: Filed Oct. 1, 1948. [75]

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### CLERK'S CERTIFICATE

United States of America,  
District of Arizona—ss:

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of Frank M. Siegmund, Plaintiff, vs. General Commodities Corporation, Limited, an Hawaiian corporation, et al., Defendants, numbered Civ-1142 Phoenix, on the docket of said Court.

I further certify that the attached pages numbered 1 to 75, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the

endorsements of filing thereon, called for and designated in Plaintiff and Appellant Frank M. Siegmund's Designation of Record on Appeal, and Defendants' Designation of Additional Portions of Record Required on Appeal, filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record remaining on file in my office, with the exception of the portions of the Reporter's Transcript.

I further certify that the original of the Reporter's Transcript filed in said cause is transmitted herewith and made a part of the record on appeal herein.

I further certify that the plaintiff deposited the sum of \$250.00 cash on July 23, 1948, as and for plaintiff's cost bond on appeal and that said cash bond on appeal is now on deposit in the registry fund of this Court.

I further certify that the Clerk's fee for preparing and certifying this said transcript of record amounts to the sum of \$17.40 and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of said Court this 19th day of October, 1948.

(Seal)            /s/ WM. H. LOVELESS,  
Clerk. [76]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT

FRANK M. SIEGMUND

was called as a witness by the defendants for cross examination, and having been first duly sworn, testified as follows:

Cross Examination

Mr. Rawlins:

Mr. Rawlins: This will be on cross examination under the Statute.

The Court: All right.

Mr. Rawlins: State your name.

A. Frank M. Siegmund.

Q. Where do you reside, Mr. Siegmund?

A. Phoenix, Arizona.

Q. Do you know Tom Davis?

A. I certainly do.

Q. And you entered into a contract of employment, or sales representative, with the General Commodities Corporation?      A. I did.

Q. Where was that contract entered into?

A. In San Francisco. [4\*]

Q. At the Palace Hotel?

A. That is correct.

Q. Now, then, you returned to Arizona, is that correct?      A. That is right.

Q. And then you assigned one-half of your con-

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\* Page numbering appearing at foot of page of original certified Reporter's Transcript.

(Testimony of Frank M. Siegmund.)

tract east of the Mississippi River, I believe, to an outfit called the H & H Associates?

A. It was not an assignment, no, it was a contract of employment.

Mr. Sullivan: Your Honor, may we ask — I think we are getting long far afield on the question of where the corporation is doing business. The question was on the assignment of his contract.

Mr. Rawlins: If the Court please, there are two points; the first is whether or not this action involves anything that was done in this State of Arizona. We think if the action involves contracts without the State of Arizona, then the Court has no jurisdiction for that reason; secondly, if the General Commodities is doing no business within the State of Arizona, under the rules of the Court, we are entitled to a dismissal, and one is interwoven with the other. I think the Court will find it is material in the argument that will be presented later. [5]

(Thereupon argument between Court and counsel.)

The Court: I don't know enough about it to rule intelligently on that feature of it. I don't know anything about this case. It is your lawsuit. I want to know all of the facts and all of the background.

The Witness: May I answer that question again a little more entirely?

The Court: What was the question, now?

(The question was read by the reported.)

The Witness: I can further state in respect to



(Testimony of Frank M. Siegmund.)

that, that under the terms of the contract, a part of my duties was to appoint sales agents and organize a sales force, and in the process of that organization I did appoint the H & H Associates and David H. Caswell as sales agents east of the Mississippi River.

Mr. Rawlins: Q. So now, have you a corporation? A. Am I a corporation?

Q. Yes, in that sense of the word.

A. No.

Q. Now, Mr. Siegmund, you contracted to represent the General Commodities in San Francisco, that is correct, isn't it? A. That is right.

Q. Now, you know that the General Commodities [6] is a Hawaiian corporation?

A. Yes, I know that.

Q. And you know Mrs. Thelma Akana, Ernest Kai and William Heen are residents of Honolulu?

A. Yes, I understand that to be true.

Q. And you know that Tom Davis is a resident of California?

A. I presume that is true, yes.

Q. You said so in your complaint?

A. Yes, I understand that is true.

Q. Now, what business, to your knowledge, has the General Commodities Corporation transacted in Arizona?

A. Well, there has been considerable business transacted in Arizona. In the first place, all of the dealings in the United States was supposed to clear through my office in Phoenix, Arizona.



(Testimony of Frank M. Siegmund.)

Q. That is, through you, as Frank Siegmund, sales agent?

A. That is right, and at various times we have brought out people, different buyers, to Phoenix to negotiate contracts and negotiate purchases.

Q. Who did you bring to Phoenix?

A. Personally?

Q. Yes.

A. I didn't bring anybody personally. I was [7] instrumental in having them brought here, though. I would say Jack Purdy, Bert Kaplan, and a lot of negotiations were handled from Phoenix by telephone by both myself and by Mr. Davis.

Q. Now, did you sign any contract at any time or at any place on behalf of the General Commodities Corporation?      A. No.

Q. There never was any deal concluded by you?

A. It was impossible to conclude a deal.

Q. Right. Do you know of your own knowledge of any deals that were signed in Phoenix?

A. That were signed in Phoenix?

Q. Yes, or in the State of Arizona.

A. I don't remember of anyone. I don't know whether any were concluded in Phoenix or elsewhere, but I know a lot of negotiations were handled in Phoenix.

Q. You do know that Bert Kaplan and Jack Purdy came down for negotiation?

A. Yes, sir.

Q. Has the General Commodities such an office in Phoenix?      A. Only the sales office.

(Testimony of Frank M. Siegmund.)

Q. That is your office? A. That is right.

Q. Do you have any other offices here?

A. None other than Mr. Davis made his headquarters in Phoenix a considerable part of the time.

Q. Mr. Davis is their Vice President?

A. That is correct.

Q. Mr. Davis has been here this winter, is that correct?

A. He has been here on numerous occasions last fall, last summer, and also this winter a considerable portion of the time.

Q. You know he has been in ill health a part of this time? A. Since December, yes.

Q. He has been in the hospital for a month or so? A. Since December, yes.

Q. Whatever business the General Commodities has done, to your knowledge, has been done by Mr. Davis as Vice President?

A. Yes, I presume so.

Q. They have no regularly established office?

A. No.

Q. They have no registered phone number?

A. No.

Q. There is no one else in Phoenix, Arizona, except Mr. Davis? [9]

A. No, no one else who could transact any business of the corporation except Mr. Davis.

Q. Now, other than what Mr. Davis may have done here on his visits would be all that you would know that the corporation did in Phoenix?

(Testimony of Frank M. Siegmund.)

A. That is right.

The Court: Does the corporation maintain an office in Hawaii?

A. They have an office, but I don't think they ever transacted any business there. All business has been transacted in the United States.

Mr. Rawlins: Pardon me, your Honor, have you any questions?

The Court: No.

Mr. Rawlins: Q. Now, the business of the corporation is buying from the Chinese Government scrap materials and heavy equipment that the Chinese Government received from the United States of America in the payment of some debt?

A. That is right.

Q. Now, was any of that surplus, I will say "surplus", or that equipment or material ever been moved into Arizona, do you know?

A. If it has been, it has been moved here by some companies—I don't know whether any of it has come into Arizona or not. [10]

Q. But the General Commodities has not moved any into Arizona?

A. No, there is no buyer here large enough to buy it.

Q. You talked to Jack Purdy and Kaplan, they are residents of Chicago, Illinois, isn't that right?

A. Yes.

Q. If they made any contract, assuming that they did, the surplus, or the material, would be delivered to them at some port and then they would distribute it anywhere they wanted?

(Testimony of Frank M. Siegmund.)

A. That is right.

Q. And the General Commodities was retailing in this country?

A. Not retailing, no, we sold in bulk to them.

Q. The General Commodities bought from China and sold through people throughout the United States?

A. Or the world.

Q. They never sold to anybody in Arizona, to your knowledge?

A. Not that I know of.

Q. These men came from Chicago; why, they came down to negotiate, and that is all there was to it.

A. That is right, and as that is in my sales office area, why, they naturally would come here or [11] I would go there.

Q. You mean to say you brought Bert Kaplan down here?

A. I didn't bring him, no, he came on the plane.

Q. I mean did they come at your expense?

A. No, it was my original contact, and they came here, I think, at Mr. Davis' request.

Q. What do you mean by your original contact?

A. I made the original contact with Mr. Kaplan.

Q. Whereabouts?

A. In Chicago.

Q. Nothing was done in Arizona to originally contact Mr. Kaplan?

A. Only by telephone.

Q. Only by telephone?

A. Yes.

Q. And you contacted Mr. Purdy in Chicago?

A. That is right.

Q. What other people did you contact?



(Testimony of Frank M. Siegmund.)

A. I have contacted an awful lot of them in the process of this transaction.

Q. Well, name some.

A. Well, I contacted company agents in Chicago who had other prospects.

Q. Who?

A. Buying agents in Chicago that were interested [12] in buying material. I have met and talked to quite a few buyers in San Francisco, one, I think, a paper company, Ken Royce. I met Mr. Michaels, talked to Mr. Michaels in San Francisco; Hyman Michaels Company, and in Chicago I have talked to numerous buyers of pipe, steel, and such as the Foster Company, Kaplan Company, Purdy Company. I don't recall the names of some of them. There is a large paper company there that I contacted, the name slips my mind, but I talked to—

Q. Now, these contacts in San Francisco of Ken Royce and Mr. Michaels were all made in San Francisco?

A. That is right.

Q. And the ones with Purdy and Kaplan people that you mentioned in Chicago were made on trips that you made to Chicago?

A. That is right.

Q. Do you have a name for your sales agency?

A. No, just Frank M. Siegmund Company.

Q. And that is the name you do business under here in Phoenix?

A. I do business under my own name, just Frank M. Siegmund, no company.

Q. You have concluded no sale here yourself?



(Testimony of Frank M. Siegmund.)

A. That was impossible. [13]

Q. Just answer yes or no, you didn't conclude any sale yourself? A. No.

Q. There has never been a sale concluded in Arizona by you? A. No.

Mr. Rawlins: That is all.

Redirect Examination

Mr. DeSouza:

Q. Mr. Siegmund, you are the exclusive sales representative for this corporation in the United States?

A. That is what my contract calls for.

Q. And pursuant to that contract, have you set up a national sales headquarters in the United States? A. I have.

Q. And where is that headquarters located?

A. Phoenix, Arizona.

Q. Where are the greater portion of sales by General Commodities Corporation made in reference to the entire world?

A. In the United States.

Q. In the United States?

A. All of them, I think. [14]

Q. This sales office through which the greater part of the sales of this corporation are carried out is at Phoenix, Arizona?

Mr. Rawlins: Now, wait a minute. If the Court please, we object to the form of that question for this reason: The man has testified he never concluded a sale. If he has done anything, it was to solicit.

(Testimony of Frank M. Siegmund.)

The Court: Yes.

Mr. DeSouza: I will ask you, what was the headquarters from which the greater portion of sales of this corporation were solicited?

A. Phoenix, Arizona, my office.

Q. Now, you testified that you set up a sales organization and had various representatives representing you? A. That is right.

Q. There was included the H & H Associates?

A. That is right.

Q. And Mr. Dave Caswell?

A. That is right.

Q. State whether or not those associates had to work through you in concluding the sales and the solicitation of sales?

A. Very definitely.

Q. Was there any contact on sales with the [15] Corporation on the part of anyone except through you? A. No, there was not.

Q. Mr. Siegmund, does the General Commodities Corporation maintain an office in Honolulu?

A. I understand they do, yes.

Q. Do you know what that office consists of as to space?

Mr. Rawlins: I object as being immaterial and irrelevant.

The Court: Oh, it doesn't make much difference.

A. One small office room, is my understanding.

Mr. DeSouza: Q. Do you know whether or not any substantial portion of the business of that corporation is conducted at its Honolulu office?

(Testimony of Frank M. Siegmund.)

A. I don't think any of it has been conducted.

Mr. Rawlins: Wait a minute. If the Court please, we ask that that be stricken because he says, "I don't think." He doesn't know anything about it, that is, in relation to Honolulu.

The Court: All right, it may be stricken.

Mr. DeSouza: Q. To your knowledge, has any sale ever been concluded through the Honolulu office? A. There is none, I understand.

Q. Has any sales solicitation taken place through the Honolulu office, of your own knowledge? [16]

A. Not of my own knowledge, no.

Q. You are acquainted with Mr. W. Thomas Davis? A. I am.

Q. And he is Vice President, I believe you testified, of the General Commodities Corporation?

A. That is correct.

Q. Will you state to the Court, if you know, who the person is, within the General Commodities Corporation, that has the authority to enter into transactions for the sale of merchandise?

Mr. Rawlins: Wait a minute, we object to that, without showing he knows of his own knowledge. It is not the best evidence, and the question is whether or not any transactions have been concluded in Arizona, I take it?

Mr. DeSouza: We are getting at that, I think.

The Witness: Mr. Tom Davis.

Mr. DeSouza: Q. Do you know whether anyone else in the organization has been concluding

(Testimony of Frank M. Siegmund.)

deals for the corporation other than Mr. Tom Davis?

A. I am sure there has not been anyone else.

Q. Do you know whether Mr. Tom Davis has at all times held the power of attorney of the General Commodities Corporation to enter into and conclude these transactions?

A. I am sure that he has. [17]

Q. What is the source of your information on that?

A. By correspondence, wires from the General Commodities office stating that at one time they withdrew the power of attorney, and again that they had reinstated it.

Q. How long a period elapsed, approximately, between the withdrawal and the reinstatement?

A. I believe it was five days.

Q. Where is Mr. W. Tom Davis' headquarters in the United States?

A. I would say at Phoenix, Arizona.

Q. Do you know what portion of his time he has spent at Phoenix, Arizona?

A. I would say more than any place else in the United States.

Q. As a general matter, whenever any purchaser desires to get in touch with Mr. W. Tom Davis, where have they been instructed to get in touch with him?

Mr. Rawlins: Wait a minute. If the Court please, I object to that as being irrelevant, immaterial and incompetent for any purposes in this



(Testimony of Frank M. Siegmund.)

matter. He doesn't know anything about it himself except he knows Davis lived here.

The Court: Did W. Tom Davis file a motion for [18] quashing return of service?

Mr. Rawlins: Yes, sir.

The Court: All right, go ahead, find out where his residence is.

Mr. DeSouza: Would you read the last question?

Mr. Rawlins: That was in the complaint, if the Court please, that he is a resident of California.

Mr. Sullivan: It does not say that.

Mr. DeSouza: He was not a citizen of California.

The Court: That is what gives the Court jurisdiction, it is citizenship.

Mr. DeSouza: The last question, your Honor, goes to the place where this corporation is transacting the major portion of its business.

(Argument between Court and counsel.)

The Court: Your authority to act for him was a contract you entered into with the Corporation?

A. That is right.

Q. That was a contract. The contract didn't say that you represented the corporation there to dispose of the property that it had, is that true?

A. I was appointed an exclusive sales representative and agent in the United States, and Mr. Davis at various times has told people that he had only one sales agent, and that was myself, and all [19] business would have to be transacted

(Testimony of Frank M. Siegmund.)

through me, but to further inform the Court as to the method of operation, it was not my deal to sell merchandise, actually make the sale. My Primary function, in my talks with Tom Davis, was to get the prospects for him, get him contacts, and he would negotiate the deal, because at no time did he ever give me sufficient information as to quantities or prices, or the quality of the merchandise that I could conclude a sale. At various times I have called him in Honolulu and had him come to the United States to negotiate a deal due to the lack of sufficient information for me to close the deal. In other words, it was a case of going out and locating the prospects and then contacting Mr. Davis and have him come and meet with these people and negotiate the deal to the best advantage to everyone.

The Court: Well, that was the only—

A. It was impossible to write a deal and close it.

The Court: That was your only employment with the company, to secure appointments and pick up these prospects?

A. That is right.

Q. You didn't represent the company in any other [20] way?

A. Other than contact. I was its exclusive sales representative in the United States. It took me all over the United States. I couldn't contact people in Phoenix except by telephone.

Mr. DeSouza: Q. Mr. Siegmund, you men-

(Testimony of Frank M. Siegmund.)

tioned a number of deals that had been transacted. Let me ask you a little further about the nature of this corporation. Is it a corporation that conducts a great many small deals, or a limited number of very large deals?

A. A very limited number of very large deals.

Q. What is the usual size of the deals in so far as the amount of money—

Mr. Rawlins: Wait a minute. If the Court please, I object to that as being irrelevant, immaterial and incompetent. This man has never been there and has never seen the contract. All he can do is by merest hearsay. I could develop that on voir dire, but I don't see any need of going into that, whether we made one sale for a dollar, or one sale for a million dollars. The sole question before the Court is, was or was not this corporation doing business in Arizona sufficiently for this Court to take jurisdiction, not only for the purpose of this man recovering on any contract that [21] was made in California, but for the purpose of ordering an accounting of the corporation, and of the corporation that is in Honolulu, and whether or not there has been enough business done here. It makes no difference, I take it, whether it is a million dollars or a half million dollars. I don't care if he tells us, but he doesn't know. All he knows is by hearsay.

A. I disagree with you.

The Court: Go ahead, you may answer.

A. I have in my possession a photostatic copy

(Testimony of Frank M. Siegmund.)

of a letter of credit on a deal that was made for approximately \$647,000. I know what that deal was, because I know when the letter of credit was executed.

Mr. Rawlins: Where was that?

A. In San Francisco, and further than that, I don't know of any deals that were for a lesser amount than that. I mean they were all for that or more. It was not a case of handling a lot of little deals. It was a case of negotiating large deals with large letters of credit, such a half million dollars, or a million, or three million dollar letter of credit, and that took time. You couldn't do it—you couldn't go in and offer a man a thousand cases of something and take his [22] order and ship it. It had to be in boat loads, and it involved considerable money and considerable negotiations both as to financial arrangements and deliveries in quantities, and things like that, and I do know this, further, that Mr. Davis has informed several buyers and several people that he only had but one representative in the United States, and all business in the United States would have to be transacted through me in Phoenix. He has made that statement to several people.

Mr. DeSouza: Q. Now, you mentioned Mr. Jack Purdy. Who is he?

A. Jack Purdy is, I believe he is the Vice President of the Purdy Company in Chicago. They are very large equipment dealers.

Q. And who is Mr. Bert Kaplan that you mentioned?



(Testimony of Frank M. Siegmund.)

A. Bert Kaplan is the partner or an officer of the company of A. S. Kaplan Company, Chicago. They are reputed to be the largest scrap dealers in the world.

Q. They are in Chicago too?

A. They are in Chicago, yes.

Q. Now, at whose request did Mr. Purdy and Mr. Kaplan come to Phoenix?

A. Well, I didn't call them and tell them to [23] come here. Mr. Davis did that after he got back to the United States, but it was subsequent to their coming here or subsequent to a meeting, that Mr. Davis and myself had with them in Chicago. He entered into primary negotiations there and I understood they later flew to San Francisco and after that, why, they flew here to Phoenix and met Mr. Davis.

Q. What was the purpose of their coming here to Phoenix?

A. To negotiate the scrap deal. I might add further that after Mr. Davis talked with them, he advised me that we were really in the scrap business and we would make more money out of this than we ever had before in our life.

Q. Are you acquainted with a corporation known as the Admiralty Trading Company?

A. I am not acquainted with it personally. It is my understanding it is the A. S. Kaplan Company and the Purdy Company combined. They formed a new corporation to handle the scrap deal.

Q. Do you know whether any scrap deals were

(Testimony of Frank M. Siegmund.)

handled by way of sales to the Admiralty Trading Company?

A. It is my understanding the entire scrap deal was handled that way. [24]

Q. The Admiralty Trading Company, you say, is composed of Mr. Purdy and Mr. Kaplan, who came to Phoenix to negotiate?

A. That is right. I might also add that I made preliminary negotiations with both in this conversation.

Mr. Rawlins: In Chicago?

A. In Chicago, yes. You can't have people to come out to Phoenix to talk about scrap. You have to go see them for a deal of that size.

Mr. DeSouza: Q. Do you recall of any sale of merchandise by the corporation to the Indonesian Government, or its purchasing agents, that was ever contemplated?

A. Contemplated, yes, I do know it was contemplated.

Q. Do you know whether anyone came to Phoenix, Arizona, on behalf of the Indonesian Government? A. Yes, I do.

Q. Did you see those persons personally?

A. Yes.

Q. What was the nature of the deal then contemplated?

A. It was to purchase soft goods line in Manus in the South Pacific in any quantity of it.

Q. What was the approximate amount involved [25] in that deal?

(Testimony of Frank M. Siegmund.)

Mr. Rawlins: I object, no showing made that any deal was ever contemplated. As a matter of fact, it was not.

The Court: It was not completed, Mr. Siegmund?

The Witness: I don't know. I have not been kept informed under the terms of the contract.

The Court: The amount involved would not make any difference.

Mr. DeSouza: We were merely showing the size and the amount negotiated whether they went through or not.

The Court: Well, that didn't go through on this one so what difference does it make?

Mr. DeSouza: Well, our point of trying to bring it out, your Honor, is to show they were negotiating on a hundred million dollar deal in Phoenix.

The Court: Well, Mr. Siegmund was?

Mr. DeSouza: No, Mr. Davis was.

The Court: Davis was a resident of California, a citizen of California, according to the pleadings.

Mr. DeSouza: Your Honor, may I again state our position on that?

The Court: You don't have to now. I have got [26] to determine whether this corporation is subject to the jurisdiction of this Court. That is what I am interested in.

Mr. DeSouza: That is what we are trying to get to. We are saying that Mr. Davis was acting under a power of attorney from this corporation, and as Vice President.

(Testimony of Frank M. Siegmund.)

The Court: All right, go ahead.

The Witness: What was the last question?

The Court: The last one I sustained the objection. There wasn't any deal consummated.

Mr. DeSouza: Q. Are you acquainted with Mr. Heen, Mr. Kai and Mrs. Akana?

A. I know Mrs. Akana. I met Mr. Heen. I have never met Mr. Kai. I have seen him.

Q. What is their position with the company, if any?

A. They are officers of the corporation.

Q. Do you know whether they have ever come to Phoenix, Arizona?

A. I do. Yes, they have.

Q. When were they last here, if you know?

A. About 45 days ago, during February, I think it was.

Q. Do you know the purpose of their coming here?

A. Yes. I presume the purpose of their coming [27] here was to negotiate a deal with the Indonesian Trading Corporation and also to negotiate the steel deal with the Chinese. The Chinese Government even had their representatives here to negotiate the steel deal.

Q. Did you ever see Mr. Heen in company with the Indonesian Government representatives in Phoenix?

A. I never personally saw him, no. I understood he was there, but I never saw him.

Q. Directing your attention to the evening be-



(Testimony of Frank M. Siegmund.)

fore this complaint was filed, did you on that occasion see Mr. Heen at the Cathay Gardens Restaurant? A. Yes, I did, that is right.

Q. In whose company was he at that time?

A. Oh, with Charles Onishi and other members who I presumed to be members of the Indonesian Trading Commission. They were strangers to me. I didn't know who they were. In other words, your Honor, it is my opinion that under the terms of my contract, I was supposed to be kept advised as to what was going on as to price, and everything like that, but they failed to fulfill that part of the contract. I made the initial contact with my agents in Chicago, made the initial contact with the Indonesians, and at that time I called Mr. Davis [28] at Honolulu and had him meet us in Chicago to negotiate and to consummate the deal, and they could not get together on the deal right at that time, or at least Mr. Davis didn't seem inclined to negotiate a deal with them, and then the General Commodities Corporation—Mr. Davis apparently figured they would deal around me and get the Indonesians to come out here and make a deal, a contract with Mr. Davis. I contacted him several times and tried to find out if the Indonesians had ever made a deal, or if further negotiations had been made, and they told me no. That was in Phoenix, in February, and I found out that Tom, every time I asked that question that the Indonesians were here, so I don't think there has been any doubt about their endeavors on the part of the

(Testimony of Frank M. Siegmund.)

General Commodities Corporation to circumvent the contract or deprive me—

The Court: That part is all right, you may have a cause of action, but you will have to place it in the right jurisdiction.

The Witness: I do not know the Indonesians were here to negotiate a sale in Phoenix.

Mr. DeSouza: Q. Now, you spoke of renegotiation on the steel deal. By that do you refer to this often publicized \$37,000,000 Bethlehem [29] Steel scrap deal? A. Yes, I do.

Q. Do you know who, if anyone, was here representing the Chinese Government in Phoenix on that deal?

A. All I know is what I read in the paper. I presume it to be authentic. Several Chinese Generals were here.

Q. They weren't here seeing you in connection with it?

A. No, sir; they were here negotiating the purchase of that.

The Court: With Mr.—

The Witness: With Mr. Davis, and the officials and other officers of the company. They were all here negotiating and transacting business in Phoenix.

Mr. SeSouza: Q. How is payment made for the purchase of merchandise from the General Commodities Corporation?

A. By letters of credit.

Q. Do you know where those letters of credit

(Testimony of Frank M. Siegmund.)

are placed for the benefit of the General Commodities Corporation?

A. Some of them, or at least a portion of them were placed in the Valley National Bank at Phoenix. [30]

Q. Have you ever had any instructions from any officers of the General Commodities Corporation as to where letters of credit were to be placed?

A. Yes, they could be placed with the Valley National Bank at Phoenix or the Naval Bank at Guam.

The Court: The what?

A. The Naval Bank at Guam.

Mr. Rawlins: Did you ever place them?

A. Personally, no, I didn't buy any.

Mr. DeSouza: Q. But you do know of your own knowledge that several letters of credit were placed with the Valley National Bank?

A. That is right.

Q. And that thereafter payment to the General Commodities Corporation for these large deals were made at Phoenix, Arizona? A. That is right.

Mr. Rawlins: Now, wait a minute, if the Court please. You don't know whether any of those letters of credit were ever bought or not, do you?

A. I don't know whether they were ever paid, no.

Q. You don't know whether they were assigned to the Bank of America in San Francisco, do you?

A. Assigned to the Bank of America?

Q. Yes. [31] A. No.

Q. The only letter of credit you ever saw was in

(Testimony of Frank M. Siegmund.)

San Francisco, is that right?       A. Yes.

Q. Anything about the Valley Bank is just what you conjecture from what somebody told you?

A. As far as the Valley National Bank, yes, that is true.

Mr. DeSouza: Q. Have you ever heard any official of the Valley National Bank discuss having letters of credit to the General Commodities Corporation at the Valley Bank?       A. Yes.

Mr. Rawlins: I object to that. That has not been done in the presence of the defendants.

Mr. DeSouza: It was done in the presence of—

The Court: I know, but if that becomes necessary to have that information, call somebody from the Valley Bank.

Mr. DeSouza: Your Honor, we have here a deposition of Mr. Glen C. Taylor, the Vice President of the Valley National Bank, in which he admits having such letters of credit.

The Court: Well, that settles that.

Mr. Rawlins: That is not true what that deposition says. [32]

The Court: Well, it is argument.

Mr. DeSouza: Q. Has Mr. Davis ever stated to you that all letters of credit should clear through the Valley National Bank at Phoenix, Arizona?

Mr. Rawlins: We object to that unless the foundation has been laid.

The Witness: Not all of them, no.

Mr. DeSouza: Q. How long has Mr. Davis been in Phoenix, Arizona?



(Testimony of Frank M. Siegmund.)

A. How long has he been in Phoenix?

Q. Yes. A. You mean recently?

Q. Since the formation of this corporation, yes.

A. I think he has been here since just before Christmas.

Q. Are you acquainted with Mr. William O'Neil? A. I am.

Q. And who is Mr. William O'Neil?

A. Mr. William O'Neil is a merchandise broker in Chicago.

Q. Are you acquainted with Mr. Homer Stevenson? A. I am.

Q. Who is Mr. Homer Stevenson?

A. Homer Stevenson is the President of the H & H Associates Company.

Q. Are you acquainted with Mr. Marvin Heaney? [33] A. No, I am not.

Q. Do you know who Mr. Marvin Heaney is?

A. I understand he is a broker on the Pacific Coast and an associate of Mr. O'Neil.

Q. Directing your attention to October 12th, 1947, did you on that date attend a conference in Room 1716 in the Blackstone Hotel in Chicago, Illinois, at which there were present besides yourself, Mr. David Caswell, Mr. F. Harold Brasie, Mr. William O'Neil, Mr. Frank Smith, Mr. Charles Onishi, and Mr. E. T. Moore?

A. Yes, I was there; in fact, I called the meeting.

Q. Was Mr. Thomas W. Davis there?

A. Yes, I had Mr. Davis fly in from Honolulu there.

(Testimony of Frank M. Siegmund.)

Q. Did Mr. Davis at that time make any statement as to where the letters of credit should clear?

A. That time, and subsequent to that, they were supposed to be placed with the Valley National Bank. Prior to that, it was the Naval Bank at Guam.

Q. He so stated that in the presence of these persons? A. That is right.

Q. Did he state where he, meaning Mr. Davis, could be reached? [34]

A. Well, he could always be reached through me here in Phoenix. I can add to that, if it is permissible, that I think the major portion of Mr. Davis' business has always been transacted in the Valley Bank in Phoenix.

Mr. Rawlins: That is his, individually?

The Witness: That is right.

Mr. DeSouza: I think that is all. I'd like to call one additional witness, your Honor.

The Court: All right.

(The witness was excused).

Mr. DeSouza: Call Mr. Caswell.

#### DAVID H. CASWELL

called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows:

#### Direct Examination

Mr. DeSouza:

Q. Will you state your name, please?

A. David H. Caswell.

Q. Where do you reside?

A. 902 West Avalon Drive, Phoenix.

(Testimony of David H. Caswell.)

Q. What is your business, Mr. Caswell?

A. I am a furniture sales representative.

Q. Are you acquainted with Mr. Frank Siegmund? [35] A. I am.

Q. Are you acquainted with Mr. W. Thomas Davis? A. I am.

Q. Have you ever participated in any of the dealings on behalf of the General Commodities Corporation to obtain purchasers for its merchandise?

A. I have.

Q. What was your connection in the deal with regard to Mr. Frank Siegmund?

A. Mr. Siegmund made me his partner or his representative in Chicago.

Q. Made you his representative?

A. That is right.

Q. Now, directing your attention to October 12th, 1947, did you at that time attend a meeting in Room 1716 of the Blackstone Hotel in Chicago, Illinois, at which there were present Mr. Frank Siegmund, yourself, Mr. F. Harold Brasie, Mr. William O'Neil, Mr. Frank Smith, Mr. Charles Onishi, Mr. E. T. Moore and Mr. W. Thomas Davis? A. I did.

Q. On that occasion did Mr. Davis make any statement to the group as to where letters of credit for merchandise purchased should be filed?

A. He did.

Q. And where did he say to have them filed?

A. The Valley National Bank at Phoenix, Arizona.

(Testimony of David H. Caswell.)

Q. Did Mr. Davis state where he could be located at any time?

A. He stated he could be located at any time through Mr. Frank Siegmund.

Mr. DeSouza: That is all.

Cross Examination

Mr. Rawlins:

Q. Where did you first meet Mr. Davis?

A. Palace Hotel in San Francisco.

Q. Now, at the Palace Hotel in San Francisco, you were there at the time this contract was entered into with Siegmund?

A. I was there during the negotiations.

Q. You were there during the negotiations?

A. That is correct.

Q. Now, what is your deal with Siegmund?

A. That I should represent him in Chicago and all over the country and make all contacts possible.

Q. Have you got a written contract with him?

Mr. DeSouza: If the Court please, we think it is immaterial whether this man has a written contract with Frank Siegmund. That has nothing to do with whether this corporation is doing business in Arizona, as far as I can see. [37]

The Court: I don't know. This man was doing business in Chicago for the corporation. Mr. Siegmund was doing business in Phoenix for the corporation.

Mr. Rawlins: Well, the object in finding out if he had a written contract is to find out if he is a party to the complaint, that is why I want to know if he had a written contract.



(Testimony of David H. Caswell.)

The Court: Well, if he didn't have a written contract with the corporation, you don't have to worry about that.

Mr. Rawlins: Were you a party to the serving of notice on the corporation that you had an interest in the Siegmund contract?

A. No, sir.

Q. Now, you attended this meeting in Chicago and the one in San Francisco? A. Yes.

Q. Who is E. T. Moore?

A. He is an employee of the H & H Associates.

Q. In Chicago? A. Right.

Mr. Rawlins: That is all.

Mr. DeSouza: That is all; we have nothing more.

The Court: That is all.

(Witness excused).

[Endorsed]: Filed Sept. 27, 1948. [38]

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[Endorsed]: No. 12068. United States Court of Appeals for the Ninth Circuit. Frank M. Siegmund, Appellant, vs. General Commodities Corporation, Limited, Wm. H. Heen, Ernest K. Kai and Thelma M. Akana, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Arizona.

Filed October 21, 1948.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals for the  
Ninth Circuit

No. 12068

FRANK M. SIEGMUND,

Appellant,

vs.

GENERAL COMMODITIES CORPORATION,  
LIMITED, an Hawaiian corporation, WM. H.  
HEEN, ERNEST K. KAI, and THELMA M.  
AKANA,

Appellees.

STATEMENT OF POINTS TO BE RELIED  
ON BY APPELLANT, FRANK M. SIEG-  
MUND, ON APPEAL

The appellant, Frank M. Siegmund, hereby states the following points to be relied upon by him in the prosecution of his Appeal:

1. The District Court erred in dismissing this action as against the defendants, General Commodities Corporation, Limited, an Hawaiian corporation, Wm. H. Heen, Ernest K. Kai, and Thelma M. Akana.

2. The District Court erred in concluding that the Act of Congress, passed in 1940, 28 U.S.C.A.

41, amending Section 24, Subdivision 1 of the Judicial Code, is unconstitutional.

Dated this 30th day of October, 1948.

JAMES L. DeSOUZA and  
JOHN F. SULLIVAN,

By /s/ JAMES L. DeSOUZA,  
Attorneys for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed November 1, 1948. Paul P.  
O'Brien, Clerk.

